

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

February 22, 2024 at 10:30 a.m.

1. [24-90017-E-7](#)
[BSH-3](#)

WENDY DEULUS
Brian Haddix

MOTION TO AVOID LIEN OF U.S.
SMALL BUSINESS ADMINISTRATION
1-28-24 [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 Chapter 7 Trustee and other parties in interest on January 28, 2024. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Avoid Lien is granted as to the tools of the trade.</p>

This Motion requests an order avoiding the lien of U.S. Small Business Administration ("Creditor") against property of the debtor, Wendy Marie Deulus ("Debtor"), pursuant to 11 U.S.C. § 522(f)(1)(B)(ii). The encumbered property includes a variety of fitness equipment ("Property") Debtor uses to run her fitness business. The Property for which the lien avoidance is stated to be: indoor bikes, a TRX, rack of dumbbells, squat rack, kettle bells, rack of plates and bars, wall balls, slam balls, sound system,

exercise bands, battle ropes, 360 step, Bosu balls, Rebox steps with risers, and exercise mats for a total estimated value of \$7,366. *See* Attachment 1 to Schedule A, Docket 1 p. 18.

11 U.S.C. § 522(f)(1)(B)(ii) provides for the avoidance of a nonpossessory, nonpurchase-money security interest in property of the debtor, including tools of the trade, as follows:

(f)

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

...

(B) a nonpossessory, nonpurchase-money security interest in any—

...

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; . . .

On June 19, 2020 Debtor obtained a loan from Creditor in the principal amount of \$150,000 secured by the Property. Exhibit B, Docket 34. Creditor perfected its secured interest on June 18, 2020. Exhibit C, Docket 34. This loan is a nonpossessory, nonpurchase-money security interest in Debtor's tools of the trade, and therefore may be avoided pursuant to 11 U.S.C. § 522(f)(1)(B)(ii).

Creditor filed Proof of Claim 1-1 on January 25, 2024, stating that its entire claim was unsecured.

Pursuant to Debtor's Schedule A, the subject personal property has an approximate value of \$7,366 as of the petition date. Dckt. 1 p. 15. There are not any unavoidable consensual liens in the Property, but Debtor has claimed an exemption in the amount of \$7,366 on Schedule C (Dckt. 21 p. 4) pursuant to California Code of Civil Procedure §§ 703.140(b)(6) for which the maximum allowed exemption for tools of the trade is \$8,725.00.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity in the tools of the trade to support the lien. Therefore, the fixing of the lien impairs Debtor's exemption of the Property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B). The lien is only avoided as to the Debtor's Property as listed below:

1. Indoor bikes,
2. A TRX,
3. Rack of dumbbells,
4. Squat rack,
5. Kettle bells,
6. Rack of plates and bars,
7. Wall balls,
8. Slam balls,
9. Sound system,
10. Exercise bands,
11. Battle ropes,
12. 360 step,

13. Bosu balls,
14. Rebox steps with risers, and
15. Exercise mats.

and the lien is not avoided as to any other items of Debtor's property.

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Lien pursuant to 11 U.S.C. § 522(f) filed by Wendy Marie Deulus ("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 lien of U.S. Small Business Administration, is avoided in the following items of personal property:

1. Indoor bikes,
2. A TRX,
3. Rack of dumbbells,
4. Squat rack,
5. Kettle bells,
6. Rack of plates and bars,
7. Wall balls,
8. Slam balls,
9. Sound system,
10. Exercise bands,
11. Battle ropes,
12. 360 step,
13. Bosu balls,
14. Rebox steps with risers, and
15. Exercise mats.

and the lien is not avoided as to any other items of Debtor's property pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 4, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is ~~xxxxxxx~~, the Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss is ~~xxxxxxx~~.

February 22, 2024 Hearing

As of the court's review of the docket on February 16, 2024, the Trustee Report at the 341 Meeting was filed on February 13, 2024.

Trustee was ordered to, on or before February 15, 2024, file a status report as to whether she is continuing to pursue the dismissal of this case, whether the Trustee believes that the hearing should be further continued, or whether the Trustee requests this Motion to be Dismissed without prejudice. Order, Docket 30.

Alternatively, the Trustee could elect to file her Notice of Dismissal of Motion without prejudice as provided by Federal Rule of Civil Procedure 41(a)(1)(A) and (B), and Federal Rule of Bankruptcy Procedure 7041 and 9014(c), there being no response pleading having been filed to this Motion. A Notice of Dismissal of Motion by the Trustee was ordered to have been filed on or before February 15, 2024.

As of February 20, 2024, no such documentation has not been filed.

At the hearing, **XXXXXXX**.

REVIEW OF THE MOTION

Trustee seeks dismissal of the case on the grounds that Pamela Sue Morgan (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor’s case is not dismissed, Trustee requests that the deadline to object to Debtor’s discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor’s next scheduled Meeting of Creditors, which is set for 8:00 a.m. on December 21, 2023. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 20, 2023. Dckt. 23. Debtor informs the court of her maladies, including struggling financially on her own and suffering from many medical issues. She informs the court she did not attend the meeting of creditors because she did not understand the notice of the meeting or the meeting itself.

DISCUSSION

Debtor did not appear at the Meeting of Creditor’s. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, Debtor appeared and expressed her intention to fulfill her obligations and prosecute this Chapter 7 Case.

The hearing is continued to afford Debtor the opportunity to attend the continued First Meeting of Creditors and prosecute this Case.

January 25, 2024 Continued Hearing

The Chapter 7 Trustee, Nikki B. Farris (“Trustee”) filed her report at the 341 Meeting on January 10, 2024. The Trustee reports that Debtor appeared and the 341 Meeting has been continued to February 15, 2024.

No appearance at the January 25, 2024 hearing or updated status pleading filed, by either the Trustee or the Debtor, was filed prior to the January 25, 2024 hearing as to whether the Trustee sought to continue this matter in light of the continued 341 Meeting or proceed with the dismissal of the case, or whether the Debtor opposed the Motion..

The updated Trustee Docket entry reports state that the Debtor appeared in *pro se* at the December 21, 2023 continued 341 Meeting and appeared with counsel at the furthered continued 341 Meeting on January 10, 2024. December 21, 2023 and January 10, 2024 Docket Entry Reports.

The 341 Meeting has been further continued to February 13, 2024.

In light of the Debtor appearing and the 341 Meeting being continued the court continues the hearing on this Motion to Dismiss to 10:30 a.m. on February 22, 2024.

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXXXX**, and the Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss is **XXXXXXX**.

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

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, and Office of the United States Trustee on January 31, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Reject Lease or Executory Contract is granted.</p>
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Nikki B. Farris, the Chapter 7 Trustee ("Movant") moves to reject a month to month lease where Debtor operated its dental practice ("Lease"). *See* Schedule G, p. 17. Movant asserts that it has closed down the dental practice, left its dental equipment at the premises, and turned the keys over to the landlord. Motion, Docket 27 ¶ 11. The landlord has a new potential tenant already lined up and does not want to lose that potential income. Decl., Docket 30 ¶ 6.

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that the executory contract is disclosed on Official Form 206G at Line 2.1. Docket 1, p. 17.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

DISCUSSION

Here, Movant has demonstrated several sound business judgment reasons for rejecting the Lease. Debtor is no longer operating his business out of the premises, and the landlord has already got a new potential tenant lined up.

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the month to month lease. Therefore, the Motion is granted, and Movant is authorized to reject the Lease, pursuant to 11 U.S.C. § 365(a).

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 Reject Lease or Executory Contract filed by Nikki B. Farris, the Chapter 7 Trustee in this case, ("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 Movant is authorized to reject the lease for the real property commonly known as Building #8 located at Foothill Medical Center, 777 Delnero Drive, Suite D, County of Tuolumne, Sonora, California (where Debtor formerly operated its dental practice), listed on Schedule G as "Lease of dental office) at Line 2.1 (Docket 1, p. 17).

The rejection of the above lease is effective upon issuance of this order, no further act of the Chapter 7 Trustee is required.

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, and Office of the United States Trustee on January 31, 2024. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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, -----.

<p>The Motion to Abandon is granted.</p>

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).

Abandonment of Personal Property and Lease Real Property (Office)

The Motion filed by Nikki Farris ("the Chapter 7 Trustee") requests that the court authorize her to abandon the personal property Richard E. Silva, Inc. ("Debtor") used in its dental business ("Personal Property") and the leased property at which the business was operated ("Lease Property").

The Personal Property and the Lease Property to be abandoned are specifically identified in the Motion to Abandon. Mtn, ¶¶ 6, and introductory paragraph, p. 1:18-20; Dckt. 33. The Personal Property is encumbered by the liens of Small Business Administration, securing a claim of \$89,550. Decl., Docket 35 ¶ 6. The Declaration of Lonny Papp, the President of TMC Auction, Inc., has been filed in support of the Motion and provides testimony that the value of the Property is \$8,000-\$12,000. Decl., Docket 36 ¶ 2.

The Trustee also requests authorization to abandon the leased real property commonly known as Building #8 located at Foothill Medical Center, 777 Delnero Drive, Suite D, County of Tuolumne, Sonora, California (where Debtor formerly operated its dental practice). The court pursuant to a separate order (DCN: BLF-2) has authorized the Trustee to reject the lease of the forgoing real property.

The court finds that the Personal Property secures claims that exceed the value of the Personal Property and that the Lease Property now is burdensome to the Bankruptcy Estate, and there are negative financial consequences for the Estate if it retains the both the Personal Property and Lease Property. The court determines that the Personal Property and Lease Property are of inconsequential value and benefit to the Estate, as well as now being financially burdensome and authorizes the Chapter 7 Trustee to abandon the Property. The court specifically identifies the Personal Property and Lease Property abandoned in the order granting the Motion.

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

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

The Motion to Abandon Property filed by Nikki Farris (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and Nikki B. Farris, the Chapter 7 Trustee, is authorized to abandon the following property of the Bankruptcy Estate:

1. The leased real property commonly known as Building #8 located at Foothill Medical Center, 777 Delnero Drive, Suite D, County of Tuolumne, Sonora, California, and
2. The specified Personal Property below, which has been identified as having been used in the former operation of the dental practice described:

a. Equipment Inventory:

- 1 Royal Dental Chair OP IV
- 3 Coachman Pelton & Crane Dental Chairs OPS I, 11 & 111
- 3 Assistant's Stools
- 2 Doctor's Stools
- 1 Dexis Focus X-ray Unit *new Between OP I & 11
- 1 SS White X-ray Unit OP III
- 3 Pelton & Crane Overhead Light 2 in storage
- 2 TLC Seltzer Institute Overhead Halogen Lights
- 2 Instrument Composite Trays
- 2 Instrument Amalgam Trays
- 2 Crown Insert Trays
- 2 Crown Prep Trays
- 2 Endo Trays

- 45 Oral Surgery Instruments
- 1 Parkell turbo Ultrasonic Scaler
- 1 Picasso AMO Laser Unit
- 1 Midland Laser Caries Detector
- 3 Dentrax Intraoral USB Remote Interfaces
- 1 Dentrax Image Intraoral Camera
- 1 Schick Digital Sensor Adult-size
- 1 Schick Digital Sensor Pedo-size
- 1 Rembrandt Sapphire Whitening System w/ Crystal & Stand
- 7 Dell Computers networked with Windows 10 Pro
- 6 Dell 19" Monitors w/ Sound System
- 4 5-drawer Cabinets
- 3 Dentrax ImageCAM Digital USB 2.0 wall-mounted
- 2 Schick USB Remote Interfaces
- 1 Econovac Buffalo Vacuum w/ Heater
- 1 Soldering Gun
- 1 Patterson Model Trimmer
- 1 Health Equipment Rotary Trimmer - Partial/Denture Repairs
- 1 Baldor Polishing Lathe
- 1 Oxygen "E" Cylinder w/ Stand
- 1 Emergency Medical Kit w/ Medications for Dental Emergencies
- 1 Sandblasting Workstation for Repairs of Bridges & Porcelain
- 2 Butane Torch Lighters portable
- 2 SciCam Statim Cassette Autoclaves
- 1 Airtek dual-head Air Compressor
- 1 Suction System w/ Traps
- 1 Superdent Ultrasonic Cleaner
- 1 DCI International Lubrina Handpiece Lubricating System
- 1 Rembrandt Allegro Dental Curing Light Unit
- 1 Rainbow LED Curing Light Unit *new
- 1 Kerr Demetron LED Curing Light Unit
- 2 Full Trays of Handpiece Burrs
- 3 Ultra Lares Handpieces
- 3 757 Lares Handpieces
- 3 557 Lares Handpieces
- 5 Boxes - Upper & Lower Temporaries
- 1 Bridge Remover
- 2 Crown Removers

b. Office Furniture & Equipment:

- 1 3-drawer Oak Filing Cabinet Doctor's Office
- 1 Oak Desk w/ 2 drawers Doctor's Office
- 6 Reupholstered Chairs Reception
- 2 Televisions w/ Satellite Hook-up
- 3 Oak & Glass End Tables
- 4 Reupholstered Office Desk Chairs
- 5 Framed Professional Photographs by Tad Waterbury Reception

- 2 Framed Yosemite Oil Paintings
- 1 Edge Server w/ Casey Education Software All OPS
- 1 Dentrax Practice Management Software w/ Imaging Software
- 1 Digital Camera 5 MP w/ Light Ring & Multiple Lenses
- 3 2-line Business Telephones
- 1 Answering Machine
- 1 iPhone 64 G after-hours calls
- 2 4-drawer Filing Cabinets creme-colored
- 3 Computer Stereo Speaker Sets
- 1 HP DeskJet 57 40 Color Printer
- 1 HP DeskJet 6840 Color Printer
- 1 HP DeskJet 6940 Color Printer
- 1 HP LaserJet 3005 B&W Printer
- 1 Brother Intellifax Fax Model 2480C Color Fax
- 7 Back-UPS Pro Surge Protector Battery Backup
- 1 HP SimpleSave External Hard Drive 1 TB
- 1 Cisco Wireless G Broadband Router
- 2 Highspeed USB Hubs
- 1 MyBook Portable Hard Drive
- 1 ScanJet G301 O Color Scanner
- 1 Monitor & Keyboard Swing Arm Wall Mount Op III
- 1 Olympus Digital Voice Recorder for Dictation
- 1 HP Server
- 5 Logitech Keyboards & Mouses wireless
- 1 HP Pavilion Laptop

c. Staff Lounge:

- 4 Oak Chairs
- 1 Oak Conference Table large
- 1 Amana Refrigerator w/ Freezer
- 1 Keurig Machine
- 1 Litton Microwave Oven under-Cabinet
- 1 GE Toaster/Broiler Oven

d. Storage:

- 1 CSI Stereo PA System w/ 8 Speakers ceiling-mounted
- 1 Sony Stereo Cassette Deck w/ 5 Cassette Changer Deck
- 1 Technic 5-disc rotary CD Player
- 1 Shark Professional Vacuum Cleaner
- 1 Dust Devil Vacuum handheld

are abandoned to Richard E. Silva, Inc., the Debtor, by this order, with no further act of the Chapter 7 Trustee required.

FINAL RULINGS

5. [20-90210-E-11](#) **JOHN YAP AND IRENE LOKE** **CONTINUED MOTION TO MODIFY**
[AF-15](#) **Arasto Farsad** **CHAPTER 11 PLAN**
9-23-23 [\[303\]](#)

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Continued Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Attorneys of record who have appeared in the Bankruptcy Case, creditors holding the twenty largest unsecured claims, Creditors holding allowed secured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2023. By the court’s calculation, 47 days’ notice was provided. 28 days’ notice is required.

The Motion to Confirm the Modified 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). If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Modify the Chapter 11 Plan is granted.

REVIEW OF THE MOTION

Movant seeks to modify its confirmed Plan by reopening this case and “unwind a cram-down” of a first lienholder’s mortgage loan, Proof of Claim 5-1.” Claim 5-1 is held by the Bank of New York Mellon f/k/s/ the Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-through Certificates. Creditor’s first lien is attached to the real property commonly known as 2412 6th Street, Hughson, California 95326 (“Property”). In reopening this case, Movant seeks to confirm a Modified Plan that purports to lower its monthly payment by \$600.00 Motion, Dckt. 303. Movant filed its individual Chapter 11 Case on March 17, 2020. Dckt 1. Movant’s Plan was confirmed on July 2, 2021 (Dckt. 229), and Movant received an Order granting an Application for Final Decree on December 2, 2022 (Dckt. 294).

The subject of Movant’s Motion is the claim in Class 1D of the Confirmed Plan. Plan, Dckt. 209, p. 4. Class 1D contains Creditor’s claim in the Property. Creditor’s Proof of Claim originally depicted

a secured claim in the amount of \$405,421.01. POC, 5-1, p. 2. However, Movant filed a Motion to Value Collateral (the Property) on May 15, 2020 (Dckt. 62) which this court granted on September 3, 2020 (Dckt. 128), valuing the Property and secured claim at \$301,324.00.

Since Movant's Plan was confirmed on July 2, 2021, Movant has been paying \$1,853.90 per month for this Class 1D claim. Movant now seeks to undo this court's September 3, 2020 Order granting the Motion to Value, thereby reinstating Creditor's previously asserted secured claim amount of \$405,421.01, adding approximately \$104,097.01 back to Creditor's claim.

Movant states that such an action will reduce its monthly payment to Class 1D by roughly \$600.00. Declaration, Dckt. 305 ¶ 5. Movant's pre-petition mortgage payments to Creditor were \$1,312.53 as stated in the Modification of Deed of Trust instrument, Exhibit, Dckt 306, p. 51, ¶ C. Movant asserts it needs that extra money to pay for medical bills, and that extra money would allow Movant to rely on its family support a little less. Declaration, Dckt. 305 ¶¶ 6, 9.

APPLICABLE LAW

11 U.S.C. § 1127(e) allows an individual debtor in a Chapter 11 case to modify the contents of a plan post-confirmation. It states,

If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

(1)increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2)extend or reduce the time period for such payments; or

(3)alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

11 U.S.C. § 1127(e) [emphasis added]. The Code further provides in 11 U.S.C. § 1127(f) that,

(1)Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (e).

(2)The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.

11 U.S.C. § 1127(f). Therefore, the Code permits an individual Chapter 11 debtor to modify the plan any time after confirmation upon request, whether or not the plan has been substantially consummated, but the modification remains subject to the requirements of 11 U.S.C. §§ 1121–1129, including a disclosure as required by 11 U.S.C. § 1125 – as the court may direct.

DISCUSSION

Movant petitions this court for a modification but has failed to show the court how the proposed modification will comply with 11 U.S.C. §§ 1121-1129. A review of the docket on November 1, 2023 reveals that there has been no submission of a proposed modified plan, a disclosure statement, or any information suggesting that Creditor will agree to the proposed modification. Movant informs the court in its Motion and supporting Declaration that “BNY appears willing to unwind the cram-down.” Declaration, Dckt. 305 ¶ 5. The court is not inclined to accept this conclusory statement without some supporting evidence.

Review of Motion and Grounds Stated With Particularity Therein

The Motion seeking modification of the Confirmed Plan states the following grounds (as summarized by the court):

- A. Debtors seek to unwind a cramdown of the Bank of New York Mellon’s (“Creditor”) secured claim in the Confirmed Plan.
- B. The modification will be to increase the Creditor’s secured claim by \$104,097, vacating the court’s prior order valuing Creditor’s secured claim at the value of the collateral securing the claim.
- C. By adding the \$104,097 to the secure claim and going back to the pre-petition terms of the loan, Debtors can reduce their monthly payment to Creditor by \$600.
- D. Debtors will use the additional \$600 a month for their expenses, and let the family support of \$1,350.00 for the funding of the Confirmed Plan to be reduced.
- E. The fixed rate terms of the secured claim is at an interest rate for which the principal, interest, insurance, and taxes are only \$1,276.18 a month. Under the Plan, even with the reduced amount of the secured claim, Debtors are paying \$1,853.90 a month.

Exhibit C is a copy of Creditor’s Proof of Claim, on which the interest rate is stated to be 3% per annum. It appears that while the Proof of Claim is filed for a \$405,421.01, the monthly payments are computed on a principal balance of \$280,269, and that there is a deferred principal balance of \$125,201.45.

Attached to Creditor’s Proof of Claim 5-1 is a Modification of Deed of Trust, which also appears to be a modification of the loan it secured. The \$280,269 interest bearing portion of the debt is reamortized over forth (40) years at 3% interest, with a balloon payment of the \$125,201.45 deferred principal balance due upon sale of the property, when the interest bearing principal balance is paid, or when the loan matures.

- F. It is possible that Creditor will work out a stipulation to allow for the \$1,276.18 payments going forward.

No stipulation has been presented to the court.

The Motion does not state the grounds for confirmation of a modified plan, but merely states the Bankruptcy Code sections which must be complied with. Debtor's counsel states a conclusion that the Bankruptcy Code has been complied with, and it is likely only Creditor will vote for confirmation of the modified plan.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

November 9, 2023 Hearing

It is unclear from the pleadings whether the confirmation requirements for a modified plan have been met. From the pleadings, it appears that Debtors have concluded that they cannot perform the Plan and pay a creditor only the amount of its secured debt, but elect to "mortgage the future" and take on debt well in excess of the value of the collateral - effectively making them "tenants" of Creditor.

At the hearing, Creditor appeared and confirmed that the Parties were stipulating to the modification. Debtor/Plan Administrator's provided an overview of the economic rationale for this modification. Debtor/Plan Administrator shall file and serve supplemental pleadings documenting the agreement of Creditor and a redline version of the Plan as to be modified.

January 4, 2024 Hearing

On December 21, 2023 John Yap and Irene Loke (“Movant”) submitted supplemental evidence to the court in support of their Motion. Movant submitted a Declaration of John Yap (Docket 312) and a proposed redlined Modified Plan and Disclosure Statement (Docket 313) in support. Mr. Yap explains in his Declaration his desire to keep the real property commonly known as 2412 6th Street, Hughson, California 95326 (“Property”) in his family. Decl., Docket 312 ¶ 8. Mr. Yap further explains that even though the principal amount of the loan will be increased by this refinancing agreement, the monthly payments will go down by approximately \$559.72, allowing Movant to rely less on family support in paying the plan payments. *Id.* at ¶ 7. Of note, Movant has not submitted a stipulation with the court showing Creditor’s (Bank of New York Mellon) consent to the modification.

As stated by Mr. Yap, on June 27, 2022, Debtors were granted their discharge on June 28, 2022. The findings of the court include that all plan payments have been completed under the Confirmed Chapter 11 Plan. Civil Minutes; Dckt. 266.

The present Motion in substance is a method by which Debtors and Creditor document a modification of the terms of the contract, which have been modified by the confirmed Chapter 11 Plan, for the secured claim of Creditor.

The proposed Modification is just of Creditor’s obligation as provided for in the Plan. It does not impact any other creditors or the treatment of their terms in this Case.

Review of Proposed Modified Plan Re Treatment of Creditor’s Secured Claim

In re-reviewing the proposed Modified Plan (Redline Version, Exhibit A; Dckt. 313), the court has identified several points for apparent clarification. These are:

- A. P. 3, Footnote 2. This footnote contains a narrative of what is to occur and what in the future stipulated terms for the claim may be, rather than affirmative stating treatment of Creditor’s Class 1D secured claim. It also makes reference to a Stipulation with Creditor to modify the treatment. The court does not find a copy of the Stipulation in the record.
- B. P. 5. The Treatment for the 1D Claim is stricken, with the text being shown with a ~~strikeout format~~.
- C. P. 6. The text for the Class 1D Claim is shown in ~~strikeout text~~ and states that the payments will be made as provided in the above box, for which the ~~text is stricken~~, not shown as added.

It is not clear if this is a clerical error, and the strikeout should be underlined text. However, the Plan does not clearly state what Creditor is to be paid, what defaults in the original terms are modified, and the amount of the claim to be paid.

The existing Plan provides for Creditor to have a claim of \$301,324, which is being amortized over 30 years with an interest rate of 5% per annum, resulting in a month principal and interest payment of \$1,627.57.

At the hearing, counsel for the Debtor reported that the final terms are being documented in a stipulated modification, which will be filed with the court with a final redline version of the proposed modified plan.

February 22, 2024 Hearing

On February 15, 2024, in compliance with the court's Order (Docket 317), John Yap and Irene Loke ("Movant") filed a Stipulation Re: Treatment of Creditor's (Bank of New York Mellon f/k/s the Bank of New York, as Trustee for holders of Certificates, First Horizon Mortgage Pass-Through Certificates(FHAMS 2006-AA7) Claim under Debtor's Chapter 11 Plan of Reorganization ("Stipulation"). Docket 320. Creditor's claim is secured by a first deed of trust recorded against the real property commonly known as 2412 6th Street, Hughson, California. Movant filed the declaration of debtor Mr. Yap in support. Docket 319.

As set forth in the Pleadings, Debtor obtained their Discharges on June 27, 2022, having fully funded the Plan distributions to creditors with general unsecured claims with the acceleration of payments to that class of claims. Declaration, ¶ 5; Dckt. 319; and Motion for Entry of Discharge, ¶ 3, Dckt. 257, and Declaration in support thereof, ¶ 11, Dckt. 259.

The terms of the Stipulated Second Modified Combined Chapter 11 Plan of Reorganization and Disclosure Statement are as follows:

1. The Parties agrees to undo the "cram down" of the Bank of New York Mellon f/k/s/ the Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-through Certificates' ("Creditor") secured claim as determined by the Debtor's Motion to Value filed on May 15, 2020 and ordered signed by the Court on September 3, 2020.
2. The Debtors agree that Creditor's secured claim is to remain at the amount stated on the filed Proof of Claim 5-1, with the secured claim amount of \$405,421.01 entirely secured by the Subject Property.
3. The Parties agree that Creditor's treatment in the Chapter 11 Plan shall remain unimpaired and unchanged and remain the same as is under the Modified Deed of Trust.
4. The Parties agrees that the terms of the Modified Deed of Trust as provided in Proof of Claim 5-1 pages 43-48 shall remain in effect.
5. The Debtors will making monthly principal and interest payment in the amount of \$1,045.80, with escrow payments at \$236.33 per month and subject to change. The total PITI monthly payment was \$1,282.13, due and payable on the first day of the month each month and subject to change due

to escrow, beginning with the first payment due after confirmation of the Chapter 11 Plan on August 1, 2021.

6. The current on-going escrow payment as of December 1, 2023 is \$282.48, and the current on-going PITI monthly payment is \$1,328.28 as of December 1, 2023. Debtors are current with their on-going PITI payments under the Modified Deed of Trust terms. Debtors will continue making the on-going PITI monthly payment directly to Creditor.
7. In addition to the regular on-going PITI payments, the Debtors shall cure the prepetition arrears in the amount of \$2,004.04 by direct payment to the Creditor paid in full by March 31, 2024.
8. Except as otherwise expressly provided herein, all remaining terms and provisions of the Note, Deed of Trust, and Modified Deed of Trust shall remain the same.
9. Creditor's legal, equitable and contractual rights shall remain unchanged with respect to its security interest in the Subject Property. Creditor shall retain its interest in the Subject Property until the obligations under the Note and Modified Deed of Trust are paid in full.
10. The terms of this Stipulation shall control over the terms of Creditor's treatment in the Confirmed Chapter 11 Plan.
11. In the event of a default, Creditor can file a motion to have the case dismissed or converted to a Chapter 7 liquidation, or enforce its non-bankruptcy rights without further notice to the Debtor or the court.
12. This Stipulation may be executed in counterparts, and electronic signatures shall be deemed originals.

Exhibit A, Docket 320 ps. 4-5.

The Modified Terms of Creditor's Class 1 Claim are:

1. Principal Amount..... \$417,338.15
2. Interest Rate..... 3% on the interest bearing principal balance of \$292,136.70
 - a. \$125,201.45 of the Principal Amount is deferred, and Movant will not pay interest on this amount
3. Period of Payments..... Maturity date of February 1, 2057
4. Monthly Payment.....\$1,328.28, but may adjust periodically for changes in monthly escrow payment.

February 22, 2024 at 10:30 a.m.

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5. Other Payments..... Debtors/Plan Administrators shall cure the \$2,004.04 prepetition arrearage on or before March 31, 2024 by direct payments to the Creditor.
6. In the event of a post-confirmation default in payments, Creditor may file a motion to dismiss or convert the case to one under Chapter 7, or enforce its non-bankruptcy rights without further notice to the Debtor or the court.
 - a. There is no post-confirmation § 362 stay with respect to Creditor enforcing its rights.

Movant and Creditor have responsibly addressed these issues, allowed interested parties to participate in the solution, and have presented a Stipulation that permits Debtor to move on.

Movant having provided redline copy of the Second Modified Plan comparing it to the prior confirmed Plan and providing testimony of the reasons and ability to make the payments on the modified treatment of Creditor's secured claim, the Motion is granted and the Second Modified Combined Plan of Reorganization and Disclosure Statement Dated February 15, 2024 (redline version filed at Dckt. 318) is confirmed. The proposed Second Modified Combined Plan of Reorganization and Disclosure Statement and evidence provided fulfill the requirements of 11 U.S.C. § 1127 and § 1129. No opposition was filed to the Motion to Confirm the Second Modified Plan.

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

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

The Motion to Modify the Chapter 11 Plan filed by John Yap and Irene Loke ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Modify the Chapter 11 Plan is granted and the Second Modified Combined Plan of Reorganization and Disclosure Statement (Redline version filed at Dckt. 318) is confirmed.

IT IS FURTHER ORDERED that Counsel for the Debtors shall file a non-redline version of the Second Modified Combined Plan of Reorganization and Disclosure Statement, and lodge with the court a proposed confirmation order with the non-redline version attached to the proposed confirmation order as Addendum A.

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2023. By the court’s calculation, 56 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.

Golden Goodrich LLP, the special counsel (“Applicant”) for Gary Farrar, the Chapter 7 Trustee (“Trustee”), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 1, 2023, through November 30, 2023. The order of the court approving employment of Applicant was entered on May 19, 2023. Dckt. 75. Applicant requests fees in the amount of \$28,240.00 and costs in the amount of \$3,121.25. Applicant was granted fees in the amount of \$13,860.00 and expenses in the amount of \$888.66 on November 14, 2023. Docket 237.

The Chapter 7 Trustee, Gary Farrar, filed a declaration on January 8, 2024 informing the court that he has no objection to this Application. Docket 257.

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 (i) investigating potential undisclosed assets, (ii) obtaining approval of 2004 motions, (iii) conducting 2004 examinations, (iv) preparing and filing a complaint against the Debtor, and (v) advising the Trustee on these matters. The court finds the services were beneficial to Trustee 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 50.9 hours in this category. Applicant prepared for and conducted the 2004 examinations of John McCallum and John Mendoza on October 4 and November 17, 2023, respectively. Applicant also continued to contact the Examinees. The Firm spoke with Debtor’s counsel, Peter Macaluso (“Debtor’s Counsel”), who advised that he does not represent any of the Examinees but wanted to be informed regarding their 2004 examinations. The Firm then sought to communicate with some of the Examinees, including Jenae-Desiree Mendoza (“Ms. Mendoza”), and Lupe Martin.

Applicant states that there have been numerous difficulties and challenges with Examinees evading service or refusing to appear. Applicant contends that Ms. Mendoza was ultimately served after it appeared she was evading service. Subsequently, Ms. Mendoza emailed the Firm that she was represented by a woman named Austin B. Heale. However, Applicant has confirmed that Ms. Mendoza is not represented by Austin B. Heale. Ms. Mendoza is now appearing for her examination on January 11, 2024. Applicant has proceeded to subpoena the remaining Examinees even though it appears several of them have been evading service from the process servers.

Motion, Docket 249 ¶ A ps. 7:21-28–8:1-10.

Efforts to Assess and Recover Property of the Estate: Applicant spent 15.3 hours in this category. Applicant joined in the objection of creditor WVJP 2021-4, LP (“WVJP”) to the Debtor’s claim of a homestead exemption (“Exemption”) in the real property located at 23955 Cedar Hill Lane, Twain Harte, California 95383 (“Property”) (Docket 81). However, the Debtor subsequently filed an opposition to the Trustee’s joinder in the objection (Docket 183). Therefore, on October 16, 2023, the Trustee filed his own objection to the Debtor’s Exemption (Docket 189, “Objection”). To assist the Trustee, Applicant prepared and filed the Declaration of Jeffrey I. Golden in support of the Objection which detailed the issues and

delays the Firm was encountering in conducting discovery (Docket 193). Applicant also prepared the Trustee's Complaint for Denial of Debtor's Discharge Pursuant to 11 U.S.C. §§ 727(a)(2) and 727(a)(4) ("Complaint") which was filed against the Debtor ("Defendant") on October 16, 2023, commencing adv. no. 9:23-ap-09020 ("Adversary Proceeding")

Based on Applicant's investigation, the Complaint alleges, among other things: (1) Defendant has owned as many as 37 pieces of real property at a time, but has systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors; (2) in 2014, Defendant began a series of transfers of the vast majority of his real estate holdings with the intent of keeping the properties out of the reach of creditors; and (3) to facilitate these transfers, Defendant organized new limited liability companies, notably La Estrella Enterprises and Civic Plaza, which are California limited liability companies ostensibly controlled by Defendant and Defendant's insiders, namely, Defendant's sister or sisters and daughter. Applicant analyzed Defendant's answer to the Complaint (Adv. Proceeding, Docket 8) as well as other filings by the Debtor (Adv. Proceeding, Dockets 12, 13 & 14) and prepared for discovery and the discovery conference.

Id. at ¶ B, ps. 8:12-28–9:1-9.

Employment/Fee Applications: Applicant spent 7.10 hours in this category. Applicant finalized the First Application and related filings and prepared for and appeared at the hearing held on November 9, 2023, at which time the Court approved the First Application (with the exception of a small amount of costs). Applicant also began preparing this Application.

Id. at ¶ C, p. 9:10-18.

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
Jeffrey I. Golden, Attorney	21.5	\$600.00	\$12,900.00
Christopher A. Minier, Attorney	2.6	\$600.00	\$1,560.00
Beth E. Gaschen, Attorney	9.8	\$600.00	\$5,880.00
Claudia M. Yoshonis, Paralegal	19.1	\$250.00	\$4,775.00
Cynthia B. Meeker, Paralegal	12.5	\$250.00	\$3,125.00
Total Fees for Period of Application			\$28,240.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$13,860.00	\$13,860.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$13,860.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$3,121.25 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$888.66.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Litigation support – service on examinees		\$502.60
Deposition transcripts		\$2,483.50
Online research Thomson Reuters		\$63.03
Photocopies	\$.20/page	\$50.40
Bulk postage		\$21.72
Total Costs Requested in Application		\$3,121.25

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$28,240.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second Interim Costs in the amount of \$3,125.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$28,240.00
Costs and Expenses	\$3,121.25

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

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

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

The Motion for Allowance of Fees and Expenses filed by Golden Goodrich LLP (“Applicant”), Attorney for Gary Farrar, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Golden Goodrich LLP is allowed the following fees and expenses as a professional of the Estate:

Golden Goodrich LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$28,240.00.
Expenses in the amount of \$3,121.25,

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

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2024. By the court’s calculation, 44 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.

Herum\Crabtree\Suntag, the Attorney (“Applicant”) for Gary Farrar, the Chapter 7 Trustee (“Trustee”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 22, 2022, through January 3, 2024. The order of the court approving employment of Applicant was entered on August 26, 2022. Dckt. 192. Applicant requests fees in the amount of \$15,558.50 and costs in the amount of \$427.02. Applicant is seeking fees to be paid at a reduced rate. Applicant’s actual fees are \$18,558.50, but Applicant has reduced this amount to \$15,558.50.

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 the Trustee, primarily regarding the sale of the fee interest in real property in which the Debtor owned a fractional interest. Decl., Docket 220. The Estate has approximately \$29,000.00 of unencumbered monies to be administered as of the filing of the application. Decl., Docket 219. 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 5.8 hours in this category. Applicant reviewed Debtor’s petition, schedules, and amended schedules. Additionally, Applicant prepared an application to employ and the instant motion for compensation.

Sale of Real Property: Applicant spent 41.2 hours in this category. Applicant assisted in the negotiations with the buyer regarding the sale of real property located at 5912 Squire Wells Way, Riverbank, California (“Property”). Negotiations were complicated by the fact that the Debtor only owned a fractional interest in the Property, there were significant liens and encumbrances on the Property, and only a thin amount of equity. Applicant prepared various documents necessary to complete the sale. As a result, the negotiations over the deal and the documents lasted for several months. After the agreements were signed, Applicant prepared the motion to Sell Real Property. Motion, Docket 202. Applicant attended the court hearing and the court issued an Order Granting Motion to Sell Property on October 1, 2023. Order, Docket 213.

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	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana A. Suntag, Attorney	40.7	\$415.00 (37.7 hrs), \$425.00 (3 hrs)	\$16,920.50
Amy N. Seilliere, Attorney	6.3	\$260.00	\$1,638.00

Total Fees for Period of Application	\$18,558.50
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Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$427.02 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$92.59
Postage	-----	\$334.43
Total Costs Requested in Application		\$427.02

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of \$15,558.50 for its fees incurred for Trustee. First and Final Fees in the amount of \$15,558.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs & Expenses

First and Final Costs in the amount of \$427.02 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.

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

Fees	\$15,558.50
Costs and Expenses	\$427.02

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 Herum\Crabtree\Suntag (“Applicant”), Attorney for Gary Farrar, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Attorney employed by the Chapter 7 Trustee

Fees in the amount of \$15,558.50

Expenses in the amount of \$427.02,

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

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2024. By the court’s calculation, 43 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 of Ryan, Christie, Quinn, Baker & Oakes, LLP, 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 September 19, 2022, through December 15, 2023. The order of the court approving employment of Applicant was entered on September 19, 2022. Dckt. 201. Applicant requests fees in the amount of \$2,490.00 and costs in the amount of \$31.00.

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 filing bankruptcy estate tax returns, examining the books and records of the Debtor, and rendering advice regarding the Debtor’s financial condition. Decl., Docket 225 ¶¶ 3-5. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3 hours in this category. Applicant had a telephone communication with the Trustee regarding an overview of the case, reviewed the list of creditors to determine whether any potential conflict of interests existed, prepared the Application to Employ and this Motion for Compensation. *Id.* at ¶ 4.

Tax Related Issues: Applicant spent 5.3 hours in this category. Applicant reviewed the Debtor’s prior years tax returns, had multiple discussions with the Trustee and Attorneys for Trustee regarding the determination of the Debtor’s tax basis in real property, prepared tax projections for the Trustee and Attorneys for Trustee, reviewed closing escrow statements and the deductibility of identified escrow closing costs, prepared federal and state tax returns for the Debtor’s Bankruptcy Estate, and prepared letters to the Internal Revenue Service and Franchise Tax Board requesting a prompt audit determination. *Id.* at ¶ 5.

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	8.3	\$300.00	\$2,490.00
Total Fees for Period of Application			\$2,490.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$31.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies and Postage		\$31.00
Total Costs Requested in Application		\$31.00

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 \$2,490.00 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.

Costs & Expenses

First and Final Costs in the amount of \$31.00 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.

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

Fees	\$2,490.00
Costs and Expenses	\$31.00

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 of Ryan, Christie, Quinn, Baker & Oakes, LLP (“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 of Ryan, Christie, Quinn, Baker & Oakes, LLP is allowed the following fees and expenses as a professional of the Estate:

Paul E. Quinn of Ryan, Christie, Quinn, Baker & Oakes, LLP, Professional
employed by the Chapter 7 Trustee

Fees in the amount of \$2,490.00
Expenses in the amount of \$31.00,

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

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2024. By the court’s calculation, 40 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.

<p>The Motion for Allowance of Professional Fees is granted.</p>

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

Fees are requested for the period January 3, 2023, through February 22, 2024. The order of the court approving employment of Applicant was entered on January 5, 2023. Dckt. 27. Applicant requests fees in the amount of \$5,740.00 and costs in the amount of \$154.08.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include preparing fee agreements and employment applications, advising Mr. Farrar, assisting in abandoning property of the Estate, investigating ownership and value of the property of the estate, employing an auctioneer and preparing a motion to sell, and assisting in a settlement with creditors. Decl., Docket 89 ¶¶ 4-9. The Estate has \$13,831.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 7.2 hours in this category and billed 0.

Applicant prepared her fee agreement and employment application, reviewed and advised Client regarding deadlines to object to Debtor's exemptions and to file a complaint objecting to Debtor's discharge, extending such deadlines, reviewing creditor's motion to extend the deadline to file a complaint objecting to discharge, preparing for and attending meetings of creditors, and preparing her fee application. Applicant did not bill for any time in connection with time spent on case administration. Declaration, Docket 89, ¶ 4.

Abandoned Property of the Estate: Applicant spent 3.7 hours in this category and billed 0.

Applicant investigated the value of Debtor's residence and reviewed the costs of sale and administrative costs to file a motion to obtain court approval of the sale and determined that sale of the residence would not produce any equity for the bankruptcy estate. At client's direction, Applicant prepared and filed a motion to abandon the residence because the lien amounts, the debtor's exemption, and the anticipated cost of sale of the residence would likely exceed the fair market value. *Id.* at ¶ 5.

Investigation of Ownership and Valuation of Property of the Estate: Applicant spent 20.1 hours in this category and billed 0 hours.

Applicant had numerous communications with Creditor's probate counsel Ryan Foley and Debtor's counsel regarding the Probate Case and Probate Court Orders and their impact on the ownership of the property at issue in the orders. Applicant requested additional documents including trial briefs filed in the Probate Case that resulted in the Probate Court Orders. Applicant reviewed these documents and reviewed the legal issues regarding the impact of the Probate Court Orders on the bankruptcy case and property of the bankruptcy estate. In addition, Applicant prepared and filed with the Probate Court a

Request for Special Notice to ensure that the Trustee would receive notice of any documents filed in the Probate Case. *Id.* at ¶ 6.

Review and Response to Motion For Relief From Automatic Stay: Applicant spent 9.5 hours in this category and billed 0.

Applicant reviewed Creditors' Motion for Relief From Automatic Stay regarding the contents of a safe which was allocated to Creditors through Probate Court Orders in part. At Client's direction, Applicant reviewed Creditors' Motion and had several communications with Creditors' counsel. Applicant prepared and filed a stipulated request to continue the hearing on Creditors' Motion, and prepared and filed the Client's limited opposition to insofar as it applied to the contents of the safe. *Id.* at ¶ 7.

Settlement and Motion to Compromise: Applicant spent 15 hours in this category and billed 9.7.

Applicant had several communications with Creditors' counsel regarding a possible resolution of the dispute regarding the contents of the safe. Applicant prepared the settlement agreement and prepared and filed the motion to compromise requesting Bankruptcy Court approval. Applicant appeared by telephone at the hearing and the court entered an order granting the motion. *Id.* at ¶ 8.

Employment of Auctioneer and Sale of Property at Public Auction: Applicant spent 12.6 hours in this category and billed 6.7.

Applicant reviewed communication with auctioneer regarding inspection of the contents of the safe, their employment as an auctioneer, and delivery of silver bars for auction. Applicant reviewed auction agreement and prepared and filed the motion for authorization to employ and compensate auctioneer and to sell the silver bars at auction. The court granted the motion as a final ruling. *Id.* at ¶ 9.

The Applicant submits the Declaration of Loris L. Bakken to authenticate this information. Decl., Docket 89. Detailed time sheets accompany the Declaration. Exhibit, Docket 90. The Applicant further submits the Declaration of Gary R. Farrar, who approves of the amount of compensation requested. Decl., Docket 88 at p. 1:21.

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, Esq., admitted to California State Bar in 2001.	16.4	\$350.00	\$5,740.00
Total Fees for Period of Application			\$5,740.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$154.08 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$63.30
Copying	\$.10 per page	\$30.30
Court Fees - Filing fee - Calaveras County Probate Court		\$40.00
Electronic Filing & Service - One Legal		\$20.48
Total Costs Requested in Application		\$154.08

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,740 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$154.08, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$5,740.00
Costs and Expenses	\$154.08

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, Attorney employed by the Chapter 7 Trustee.

Fees in the amount of \$5,740.00
Expenses in the amount of \$154.08,

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

10. [23-90566-E-7](#)

**DAMASO SARMIENTO
CARVAJAL
Brian Haddix**

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-1-24 [\[37\]](#)**

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and other parties in interest as stated on the Certificate of Service on February 1, 2024. The court computes that 14 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$34.00 due on January 23, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 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 discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.