

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 29, 2024 at 10:30 a.m.

1. [22-21000-E-7](#) **ROBYN JOHNSON** **MOTION FOR COMPENSATION FOR**
[GMR-3](#) **Douglas Jacobs** **GEOFFREY RICHARDS, CHAPTER 7**
 TRUSTEE(S)
 2-4-24 [174]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2024. By the court's calculation, 33 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).

At the hearing, **XXXXXXX**.

The Motion for Allowance of Trustee 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Trustee Fees is granted.

Geoffrey Richards, the Chapter 7 Trustee, (“Applicant”) for the Estate of Robyn Johnson (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 22, 2022, through, presumptively, the date of the filing of the Request on January 27, 2022.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

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

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

(B) reimbursement for actual, necessary expenses.

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

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

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

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

Benefit to the Estate

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

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

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

A review of the application shows that Applicant’s services for the Estate include determining ownership of assets, filing amended schedules, facilitating the sale of real and personal property, and negotiating with judgment creditors. The Estate has \$215,332.94 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant performed normal trustee’s duties, including: opening the case and entering it into the trustee’s case management software system, reviewing the petition and related schedules, reviewing mail, reviewing case with the attorney, preparing and conducting the 341 examination of the debtor, preparing and filing Forms 1, 2 and 3 as required by the U.S. Trustee for successive annual periods, examining proof of claims to eliminate duplication and to identify those claims that may be in addition to or in different amounts from claims listed on the debtor’s schedules, preparing monthly bank reconciliations and proper accounting of all assets and disbursements made, preparing final accounting and maintaining a proper bond.

Liquidation of Debtor’s Interests in Property: Applicant employed and managed counsel, accountant, and realtor, as well as resolving ownership with the debtor in case no. 22-20999. Applicant listed and sold the debtor’s residential real property for a gross selling price of \$800,000.00, Client’s commercial real property for a gross selling point of \$239,000.00, and a collection of twelve vehicles through a combination of auction sale and equity buy back by the debtor for a gross amount of \$91,286.00. Applicant reviewed and approved all documents regarding the sale of the real and personal property, filed estate tax returns, and prepared and filed final documents.

In total, Trustee realized \$1,131,186.45 in gross receipts. Trustee’s Final Report, Docket 169, line 4. Debtor, Robyn Johnson (“Debtor”) received disbursement of \$371,500.00 in exemptions; \$400,000.00 from Debtor’s exemption from sale of her residential property less the \$28,500 used to purchase equity for a portion of the vehicles. Declaration, Docket 176, p. 2:11-15. Thus, Trustee is left with total disbursements in the amount of \$759,686.45 as asserted on Trustee’s Compensation and Expenses Worksheet. Exhibit A, Docket 177, p. 2.

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$35,484.32
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$41,234.32
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$41,234.32
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$41,234.32

COSTS REQUESTED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$61.07 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Call Appearance Fee	\$22.50	\$22.50
Mileage	\$.6250/mile	\$12.50
Notary Fees	\$15.00	\$15.00
Postage	\$11.07	\$11.07
Total Costs Requested in Application		\$61.07

FEES AND COSTS & EXPENSES ALLOWED

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$41,234.32 are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$215,332.94 of unencumbered monies to be administered. Dckt. 169, line 4. The Chapter 7 Trustee performed normal trustee duties and facilitated the

sale of several items of property to benefit the estate. Applicant's efforts have resulted in a realized gross amount of \$759,686.45 recovered for the estate. Dckt. 177.

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

COSTS ALLOWED

Applicant has improperly requested reimbursement for court call costs. Applicant is not permitted to recover \$22.50 in the requested costs. Applicant's costs are otherwise acceptable.

First and Final Costs in the amount of \$38.57 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved authorized to be paid by 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	\$41,234.32
Costs and Expenses	\$38.57

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 Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards is allowed the following fees and expenses as trustee of the Estate:

Geoffrey Richards, the Chapter 7 Trustee

Fees in the amount of \$41,234.32
Expenses in the amount of \$38.57

The Trustee is authorized to pay 100% of the above amount in a manner consistent with distribution order provided in the Bankruptcy Code in a Chapter 7 case.

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

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 the Subchapter V Trustee, creditors and parties in interest, and Office of the United States Trustee on February 14, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days’ notice).

The Motion for Authority to Use Cash Collateral 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, -----
-----.

The Motion for Authority to Use Cash Collateral is xxxxxxx.

Lafleur Way, LLC (“Debtor in Possession”) moves for an order approving the use of cash collateral from real property, known as 1078 La Fleur Way, Sacramento, CA 95831 (“Property”). Debtor in Possession requests the use of cash collateral to pay the ongoing mortgage and to cure the arrears of the secured creditor in this case, PHH Mortgage/Plaza Home Mortgage (“Creditor”). Mtn., Docket 23 ¶ 12. Debtor in Possession submits the Declaration of its sole shareholder, Carl Dexter, to authenticate the facts alleged in the Motion. Decl., Docket 26.

Debtor in Possession states, “[b]y way of this Motion, Debtor is requesting both a preliminary and final authorization to use cash collateral.” Mtn., Docket 23 ¶ 5. However, Debtor in Possession goes on to request that it gain approval to use cash collateral on an interim basis until a final hearing is conducted on the matter. *Id.* at ¶ 13. Attached as Exhibit A is Debtor in Possession’s proposed budget. Debtor in Possession states it is filing a “60 month” projected budget (*Id.*), but the budget attached is for six months. Exhibit A, Docket 25.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

There are problems with the content of the proposed budget. The budget shows rental income of \$1,850 for January, then of \$3,775 for the months of February through June. Exhibit A, Docket 25. The court notes there appear to be spots beneath the “Borrowing” row that have been whited-out without any explanation given.

The budget proposes one payment to “Vendors” (\$383) for the month of January, then six payments to the United States Trustee for the months January through June, each in the amount of \$467. No where in the budget does Debtor in Possession show payments to Creditor.

Debtor in Possession simply puts “(ongoing)” next to the “Payments on Secured Debt” row, but does not mention any number. There are asterisks added next to “Administrative Expenses” and “Payments on Secured Debt,” but the court does not see any addendum or explanation of the asterisks. The budget does not clearly state how the cash collateral will be used.

In reviewing the Motion, it is devoid of any financial information stated with particularity as to how much cash collateral is sought to be used, to whom it is to be paid, and what assets replacement liens are to be granted.

In the Motion, the identity of Carl Dexter, who is identified as a shareholder in the Debtor, which is a limited liability company that has members and not “shareholders,” personally purchased the 1078 La Fleur Way Property in December 2023. The Motion states:

6. In December of 2023, shareholder; Carl Dexter, (“Shareholder”) bought the Subject Property, commonly known as 1078 La Fleur Way, Sacramento, CA 95831 (“Subject Property”).

Motion, ¶ 6; Dckt. 23. This statement is made with the Certifications provided for in Federal Rule of Bankruptcy Procedure 9011.

In his Declaration, Carl Dexter the statements under penalty of perjury include the following (identified by the paragraph number in the Declaration):

1. I am the president and majority shareholder of La Fleur Way, LLC. I make this Declaration in support of the Motion for Authority to Use Cash Collateral. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge, my review of relevant personal documents, or my opinion.

It is unclear how Mr. Dexter is a president and majority shareholder of a limited liability company. Limited Liability Company in California have a managing member (or members) and members, not shareholders. *See Witkin Summary of California Law, 11th Ed, CH XII Partnership, §§ 160, 156.*

2. On December 22, 2023, La Flauer [sic] Way, LLC (“Debtor”) bought 1078 La Fleur Way, Sacramento, CA 95831 (“Subject Property”) subject to the pending foreclosure.

This contradicts the motion saying that Carl Dexter purchased the Property.

6. The Shareholders collect rent from Shawnequa Dixon, Johnell T. Brown, III, and Arbitrage, LLC. (“Renters”), whom pay \$800.00, \$975.00, and \$2,000.00, respectively for a total of \$3,775.00 per month.

Mr. Dexter is testifying that multiple, unidentified “Shareholders” are collecting rents from property of the Bankruptcy Estate than the managing member of Debtor/Debtor in Possession.

8. I manage the property and I am responsible for administration duties, and the Debtor is responsible only for the Secured Creditor's payment.

Mr. Dexter is testifying that the fiduciary Debtor/Debtor in Possession, and its managing member who is a fiduciary to the Bankruptcy Estate are not responsible for managing the Property (which is property of the Bankruptcy Estate), with the fiduciary Debtor/Debtor in Possession merely being the entity who owes the secured claim and is incapable of fulfilling the fiduciary duties of a Debtor/Debtor in Possession.

Declaration; Dckt. 26.

Mr. Dexter identifies Exhibit A filed in support of the Motion as the Monthly Budget Forecast. As noted above, this Forecast has some "interesting" information, which includes:

1. Stating that only in January of 2024 that a payment of (\$383) to some unidentified "Vendors." No other payments are provided for such "Vendors" from January 2024 through June 2024.
2. No provisions are made for the payment of utilities, property taxes, repairs, maintenance, and the like one expects to see for such real property that is being used as rental property.
3. No provision is made for paying insurance on the property.
4. While having a line for "Secured debt Arrears," the Forecast provides for no payments to be made thereon.

Dckt. 25.

As presented to the court, this Forecast appears to be completely unrealistic and demonstrates that the Fiduciary Debtor/Debtor in Possession is not able to operate the Property, fulfill its obligations to the Bankruptcy Case, or prosecute this Bankruptcy Case.

In reviewing Schedule A/B, which has been signed by Carl Dexter under penalty of perjury, the Debtor had no assets upon the filing of this case, other than the encumbered real property stated to have a value of \$950,000. Debtor had no cash and appears to never have been properly capitalized with member equity contributions to buy their interests in the Debtor limited liability company.

At the hearing, **XXXXXXX**

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

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

The Motion for Authority to Use Cash Collateral filed by Lafleur Way, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. [23-23836-E-7](#) **ROBERT/THERESA OBREGON** **MOTION TO SELL**
[BLF-2](#) **Gabriel Liberman** **2-8-24 [42]**

3 thru 4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on February 8, 2024. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Nikki B. Farris, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Here, Movant proposes to sell personal property of the estate, the non-exempt equity in a 2019 GMC Sierra vin ending in 7051 (“Property”) back to Robert P. Obregon and Theresa A. Obregon (“Debtor”).

The terms of the sale are:

1. The Buyers shall purchase from the bankruptcy estate, and Ms. Farris shall sell to the Buyers, the estate's interest in the Vehicle for \$5,255.00 (the "Purchase Amount"). Buyer shall pay to Seller a deposit of \$1,500.00 at the time of Buyers' signing of this Agreement. The deposit will be credited against the Purchase Amount or, if Buyers are not the successful bidder, refunded to Buyers without interest. Debtors will not exempt any portion of the Purchase Amount.

2. The Buyers shall pay the balance of the Purchase Amount by delivering to Seller cashier's checks, or a check drawn on the Reynolds Law Corporation client trust account, for 3,755.00 made payable to "Nikki Farris, Chapter 7 Trustee, *In re Obregon*," as follows:

- a. \$1,500.00 on or before the close of business on February 29, 2024, and
- b. \$2,255.00 on or before the close of business on March 29, 2024.

(The transaction described in paragraphs 1 and 2 shall be referred to as the "Sale.")

3. Until Buyers have fully performed each of their obligations under this Agreement, they shall maintain the Vehicle in the same condition it is in now and shall keep it insured. Moreover, Debtors recognize that this Agreement shall remain in full force and effect even in the event that the Vehicle is transferred, destroyed, or otherwise encumbered.

4. As security for the obligation of the Debtor under this Agreement, the Debtor shall sign and deliver to Ms. Farris, concurrently with the signing of this Agreement, a Stipulation for Entry of Order of Turn Over (the "Stipulation") in the form attached as Exhibit 1. If the Debtor breaches this Agreement, either by failing to pay the Purchase Amount or otherwise, then Ms. Farris shall be entitled to file the Stipulation, without further notice to the Debtor, and immediately obtain an order for turnover without a hearing.

5. The transactions described in this Agreement are conditional on Bankruptcy Court approval and are subject to overbidding. Ms. Farris shall seek Bankruptcy Court approval by motion, which the Buyers shall reasonably support.

6. The Agreement shall be void and Ms. Farris will return to the Buyers any portion of the Purchase Amount that the Buyers have paid if (i) the Court does not approve the proposed Sale, (ii) the Court approves the proposed Sale but such approval is reversed on appeal, or (iii) the Court orders a bid accepted that exceeds the Purchase Amount.

7. Each party to this Agreement shall sign such further documents and take such further action as reasonably may be necessary to effectuate the terms of this Agreement.

Exhibit A, Docket 45.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor can retain the vehicle by purchasing their nonexempt equity, and the

bankruptcy estate will recover \$5,225. Movant testifies that in her experience as a Chapter 7 Trustee, it is unlikely the estate would be able to recover more than this amount if the sale were to be made to a third party. Decl., Docket 44 ¶ 7.

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

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

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

IT IS ORDERED that Nikki B. Farris, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) the non-exempt equity in a 2019 GMC Sierra vin ending in 7051 (“Property”) back to Robert P. Obregon and Theresa A. Obregon (“Debtor”), on the following terms:

- A. The Property shall be sold to Debtor for \$5,225, on the terms and conditions set forth in the Sale Agreement, Exhibit A, Dckt. 45, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. [23-23836-E-7](#) **ROBERT/THERESA OBREGON** **MOTION TO COMPEL ABANDONMENT**
[RLC-1](#) **Gabriel Liberman** **1-29-24 [36]**

Final Ruling: No appearance at the February 29, 2024 Hearing is required.

The hearing on the Motion to Compel Abandonment has been continued to April 4, 2024, the court having granted the Chapter 7 Trustee’s *ex parte* Motion to Continue (Docket 51) by order entered on February 23, 2024. Docket 52.

5. [21-24167-E-7](#)
[DNL-3](#)

RONALD/ANGELA CUSTODIO
Peter Macaluso

MOTION TO APPROVE SALE
AGREEMENT
1-30-24 [124]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on January 30, 2024. By the court’s calculation, 30 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael Hopper, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the bankruptcy estate’s interest in Ronald G. Custodio and Angela A. Custodio’s (“Debtor”) business, Chita’s Taqueria, LLC (“Property”) back to Debtor.

The terms of the sale are:

J. MICHAEL HOPPER ("Trustee"), in his capacity as the Chapter 7 trustee for the below-named bankruptcy estate, and RONALD GENE CUSTODIO and ANGELA ALVARADO CUSTODIO (collectively "Debtors") recite and agree as follows:

A. The Debtors are the debtors in Eastern District of California bankruptcy case #21-24167 which was commenced by the filing of a voluntary Chapter 13 petition on December 17, 2021, and converted to Chapter 7 on August 26, 2022. The Trustee is the duly appointed trustee for the Debtors' bankruptcy estate.

B. Among the property of the estate is the Debtors' interest in CHITA'S TAQUERIA, LLC ("Subject Property") used by the Debtors and other family members to operate a restaurant business. In their schedules, the Debtors valued the Subject Property at \$1,750, initially subject to a \$1,750 exemption claim that was withdrawn by January 24, 2022, March 8, 2022, July 20, 2022 amendments.

C. The Debtors have agreed to buy, and the Trustee has agreed to sell, the Subject Property.

NOW THEREFORE, for good and valuable consideration, including the mutual promises recited herein, and subject to Bankruptcy Court approval, the parties hereto agree as follows:

1. The purchase price shall be \$55,000.00 payable to the Trustee upon execution of this Sale Agreement. Title shall pass on the first day after the Bankruptcy Court's approval order becomes final and non-appealable.

2. The Trustee may entertain other offers and reserves the right to accept any of them through the conclusion of the hearing. The Trustee shall file, at the Trustee's expense, a motion for Bankruptcy Court approval of the sale pursuant to 11 U.S.C. Section 363, subject to overbidding at a duly noticed hearing.

3. The Debtors irrevocably waive all exemptions that have been asserted or could be asserted against the Subject Property and the Purchase Funds.

4. The Debtors acknowledge and agree that any disputes related to this transaction shall be decided, if necessary, by the Bankruptcy Court for the Eastern District of California (Sacramento Division) only, and no other tribunal. The prevailing party shall be entitled to recover attorney fees and costs.

Exhibit A, Docket 126. Debtor did not timely tender the purchase funds on May 9, 2023, but tendered the purchase price in installments, ultimately paying the price of \$55,000 in full by January 8, 2024. Decl, Docket 127 ¶¶ 5, 7.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant asserts the purchase price is a reasonable and fair approximation of the liquidation value of Debtor's interest in the LLC. *Id.* at ¶ 8. Movant asserts the amount of recovery is also in the best interest of the estate as the estate will recover \$55,000. *Id.* Movant has not received a higher offer, and creditors in the case will benefit from the funds that are not subject to any claims of exemption. *Mtn.*, Docket 124 p. 3:9-10.

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

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

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

IT IS ORDERED that the Motion to Sell by Michael Hopper, the Chapter 7 Trustee, to sell the bankruptcy estate’s interest in Ronald G. Custodio and Angela A. Custodio’s (“Debtor”) business, Chita’s Taqueria, LLC (“Property”) back to Debtor, on the following terms:

- A. The Property shall be sold to Debtor for \$55,000, on the terms and conditions set forth in the Sale Agreement, Exhibit A, Dckt. 45, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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 Service not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on January 22, 2024. By the court’s calculation, 38 days’ notice was provided. 14 days’ notice is required.

Service Issues

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

Further, Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Compel Abandonment is XXXXXXX.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).

Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Taher Aminiatsar (“Debtor”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon a 2018 Volvo VNL64T630, a tractor/truck used to haul trailers (“Vehicle”). The Vehicle is stated to be encumbered by the lien of the Small Business Administration (“SBA”), securing a claim of approximately \$85,954.35. The Declaration of Debtor has been filed in support of the Motion and values the Vehicle at \$15,000. Decl., Docket 14 p. 2:2. However, the court notes that on Debtor’s Schedule A/B, Debtor has listed the value of the Vehicle as \$30,000. Schedule A/B, Docket 1 p. 12 line 3.2. The court notes that whether the value is \$30,000 or \$15,000, the SBA lien exhausts the value of the Vehicle, if it is secured by the SBA lien.

The SBA filed its proof of claim on February 9, 2024. POC 1-1. The proof of claim states that its claim is completely unsecured, asserting no lien against any property of the estate, including the Vehicle.

On Schedule D Debtor lists the SBA claim in nearly the same amount as set forth on Proof of Claim 1-1, but states that it is secured by the Vehicle. Debtor does not list the SBA as having an unsecured claim. Dckt. 1.

While Debtor’s Declaration states that he owes the SBA \$15,000.00 and the Vehicle is his sole “business asset,” he does not testify that the SBA has a lien on it or provide a copy of a California Vehicle Title that shows the Vehicle being encumbered by an SBA lien.

At the hearing, **XXXXXXX**

~~—————The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property, including liability for any accidents that may occur while Debtor uses the Property in the ordinary course of business. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.~~

CHAMBERS PREPARED ORDER

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

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

~~—————The Motion to Compel Abandonment filed by Taher Aminiatsar (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~—————**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as a 2018 Volvo VNL64T630, a tractor/truck used to haul trailers (“Property”) and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards (“Trustee”) to Taher Aminiatsar by this order, with no further act of the Trustee 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on February 1, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Authority to Disburse Portion of Case Surplus to the Debtor, which the court construes to be a Motion to Abandon, is granted.

The Chapter 7 Trustee, Geoffrey Richards, (“Movant”) moves this court for authority to disburse a portion of the expected surplus to Debtor in the amount of \$20,000. During the administration of this case, Movant sold the bankruptcy estate’s interest real property located on 565 Arcade Boulevard, Sacramento, CA 95815 (“Property”).

The sale yielded net unencumbered proceeds in the amount of approximately \$127,000, which was sufficient to pay all claims in the case while leaving a surplus to the Abdul Munif (“Debtor”). Decl., Docket 112 ¶ 4. Subtracting all claim and expense amounts from the proceeds, Movant estimates that the case will yield surplus funds totaling approximately \$55,766.30. *Id.*

Movant estimates it will take approximately another three to four months to fully administer the proceeds in the case, but Debtor has a pressing need now for funds to save his business and make necessary repairs on his other rental properties. *Id.* at ¶ 5. Therefore, to assist Debtor in gaining his fresh start, Movant requests that the court grant Movant approval to distribute \$20,000 of the estimated \$55,766.30 surplus to Debtor before the other claims in the case have been paid.

Movant asserts that paying Debtor before other claimants, though contrary to the ordered outlined in 11 U.S.C. § 726(a), is analogous to a debtor in possession paying priority wage claims of employees in full, before other claims are paid, in a Chapter 11 case. Mtn., Docket 109 p. 3:21-24. Movant also asserts that 11 U.S.C. § 105(a) would authorize this court to allow such a distribution scheme. *Id.* at p. 4:3-12.

Applicable Law

11 U.S.C. § 726(a) describes distribution of property of the estate in a case under Chapter 7 of the Code. That section provides that the debtor is the last one to be disbursed monies (after payment of all claims and expenses) by the Chapter 7 Trustee.

Judge Klein of this district has also held, “[w]hat should be clear. . . is that a chapter 7 debtor cannot leapfrog unpaid creditors in the § 726 distribution regime. . . At a minimum, there must be some reason to depart from the norm established by the statute.” *In re Pickett*, 632 B.R. 78, 83 (Bankr. E.D. of Cal. 2021).

In this case, although Chapter 7 Trustee petitions this court to pay Debtor ahead of the other 11 U.S.C. § 726(a) claimants, there would be a surplus for the Debtor. The estimated surplus of \$55,766.30 far exceeds the requested early distribution of \$20,000. Movant asserts that this type of distribution would be analogous to paying priority wage claims of employees in full, before other claims are paid, in a Chapter 11 case. However, the Code expressly authorizes this type of distribution pursuant to 11 U.S.C. § 507(a), meaning there is a statutory basis for those wage payments made in Chapter 11 cases. On the other hand, 11 U.S.C. § 726(a) does not expressly allow for the type of payment Movant requests today.

But the court notes that the Code does authorize this type of distribution in the context of a Motion to Abandon. 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). Movant has, in essence, requested authority to abandon \$20,000 of the surplus to Debtor because that money is of inconsequential value and benefit to the Estate. After all, that money is of no value to the Estate as it will be returned to Debtor after the administration of the case.

The court determines that, based upon the testimony of the Chapter 7 Trustee, the \$20,000 of Debtor’s estimated \$55,766.30 surplus is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the \$20,000 to the Debtor.

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 Authority to Disburse Portion of Case Surplus to the Debtor filed by Geoffrey Richards (“the Chapter 7 Trustee”), which the court construes to be a Motion to Abandon, 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 Abandon is granted, and the \$20,000 of Debtor's estimated \$55,766.30 surplus is abandoned to Abdul Munif by this order, and the Chapter 7 Trustee is authorized to immediately disburse to Debtor the \$20,000 as an "advance" on the surplus monies that are computed to exist for Debtor after all claims and expenses are paid.

FINAL RULINGS

8. [22-20913-E-7](#) ZACHARIAH DORSETT MOTION FOR COMPENSATION FOR
[BLF-4](#) George Burke LORRIS L. BAKKEN, TRUSTEES
 ATTORNEY(S)
 1-15-24 [[145](#)]

Final Ruling: No appearance at the February 29, 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, and Office of the United States Trustee on January 15, 2024. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Attorney 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 Attorney Fees is granted.

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

Fees are requested for the period March 16, 2023, through February 29, 2024. The order of the court approving employment of Applicant was entered on March 23, 2023. Dckt. 89. Applicant requests compensation for fees and costs at a reduced amount of \$22,663.52.

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 regarding general case administration and strategies on how to handle property of the Estate. Decl, Docket 148. Applicant assisted the Trustee in investigating the ownership and valuation of property of the Estate, reviewed and advised the Trustee regarding possible objections to the Debtor’s exemptions, reviewed and responded to a motion for relief from the automatic stay, employed a realtor and assisted in the sale of real property. *Id.*

The Estate has \$140,000.00 of unencumbered monies to be administered as of the filing of the application. Mtn., Docket 145 p. 6:20-21. 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 3.9 hours in this category. Applicant prepared a fee agreement and employment application, reviewed deadlines to object to Debtor’s exemptions and to file a complaint objecting to Debtor’s discharge, reviewed creditor claims, and prepared this Motion. Decl, Docket 148, ¶ 4.

Investigation of Ownership and Valuation of Property of the Estate: Applicant spent 7.3 hours in this category. Applicant had numerous communications with Debtor’s Attorney regarding the ownership and valuation of Debtor’s personal property, requested additional documentation to support the valuation and ownership of the property, and reviewed the additional documents provided. *Id.* at ¶ 5. Additionally, Applicant reviewed the legal issues presented regarding the impact that Debtor’s assets, which are hemp and CBD products, would have on the bankruptcy case, attended the meeting of creditors, and reviewed tax returns and profit and loss statements. *Id.*

Review and Advise Trustee Regarding Possible Objections to Debtor’s Exemptions: Applicant spent 3.5 hours in this category. Applicant reviewed Debtor’s listed exemptions and determined that Debtor had inappropriately claimed an exemption. *Id.* at ¶ 6. Applicant communicated with Debtor’s Attorney which resulted in Debtor amending his Schedules. *Id.*

Review and Respond to Motion for Relief From Automatic Stay: Applicant spent 11.6 hours in this category. Applicant reviewed and responded to the motion for relief from the automatic stay filed by Randall and Glenda Azevedo (“Creditor”). Motion, Docket 37. Applicant had discussions with the Trustee, Debtor’s counsel, and the realtor for the real property included in the Creditor’s motion. Decl, Docket 148, ¶ 7. Applicant prepared and filled an Opposition to Creditor’s motion, had several communications with

Creditor’s counsel, and appeared at every hearing held on the Creditor’s motion for relief from the automatic stay. *Id.*

Employment of Realtor and Sale of Real Property: Applicant spent 35.7 hours in this category but is not billing for 5.5 hours. Applicant reviewed the title report for real property located at 448-450 US Highway 395, Milford, CA 96121 (“Property”) to confirm what liens were on the Property and had discussions with other creditors listed on Debtor’s Schedule D to confirm no other liens existed. *Id.* at ¶ 8. Applicant prepared a motion to employ Reed Block to list and market the Property for sale. *Id.* Applicant had numerous discussions with Reed Block regarding the complexities of selling this Property and possible interested buyers. *Id.* Additionally, Applicant reviewed sale documents, prepared and filed the motion to sell the Property, and appeared at the hearing. *Id.* Also, Applicant inadvertently included the incorrect address in the title report and sale documents, so Applicant prepared and filed a request to amend the order to include the correct address. *Id.*

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	62	\$400.00	\$24,800.00
Total Fees for Period of Application			\$24,800.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$63.52 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10	\$26.20
Postage		\$37.32
Total Costs Requested in Application		\$63.52

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of \$22,600.00 for its fees incurred for Client. First and Final Fees in the amount of \$22,600.00 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 \$63.52 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$22,600.00
Costs and Expenses	\$63.52

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

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

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

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

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

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

Fees in the amount of \$22,600.00
Expenses in the amount of \$63.52,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee. The Trustee is authorized to pay 100% of the above amount in a manner consistent with distribution order provided in the Bankruptcy Code in a Chapter 7 case.

Final Ruling: No appearance at the February 21, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), creditors, and Chapter 7 Trustee as stated on the Certificate of Service on January 22, 2024. The court computes that 38 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 due on January 8, 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 subject 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.

Final Ruling: No appearance at the February 29, 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, and Office of the United States Trustee on January 8, 2024. By the court’s calculation, 52 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant (“Applicant”) for Kimberly Husted, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 8, 2022, through January 8, 2024. The order of the court approving employment of Applicant was entered on October 19, 2022. Dckt. 64. Applicant requests fees in the amount of \$3,912.50 and costs in the amount of \$97.35.

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 providing consultation and tax analysis to the Trustee, preparation of tax returns, and administrative functions. Application, Docket 85. 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 1 hour in this category. Applicant prepared this Motion for First and Final Application for Accountant Fees and related documents. Application, Docket 85, p. 2:22-28.

Tax Consultation and Tax Return Preparation: Applicant spent 7.9 hours in this category. Applicant consulted with the Trustee and counsel regarding tax implications of a settlement agreement, allocation of fire settlement proceeds between taxable and nontaxable components, preparation of tax analysis and exhibits, and preparation of 2021, 2022, and 2023 federal and California Estate income tax returns. *Id.* at p. 2:9-21.

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
Michael Gabrielson	8.9	\$425 (2.4 hrs) \$445 (6.5 hrs)	\$3,912.50
Total Fees for Period of Application			\$3,912.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$97.35 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10	\$38.40

Postage		\$58.95
Total Costs Requested in Application		\$97.35

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 \$3,912.50 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 \$97.35 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	\$3,912.50
Costs and Expenses	\$97.35

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company (“Applicant”), Accountant for Kimberly Husted, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$3,912.50
Expenses in the amount of \$97.35,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant for the Chapter 7 Trustee. The Trustee is authorized to pay 100% of the above amount in a manner consistent with distribution order provided in the Bankruptcy Code in a Chapter 7 case.

11. [22-20975-E-7](#)
[DNL-9](#)

LINDA MIZOGAMI
Eric Schwab

MOTION FOR ADMINISTRATIVE
EXPENSES
1-22-24 [143]

Final Ruling: No appearance at the February 29, 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 22, 2024. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

The Motion for Allowance of Administrative Expenses 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 Administrative Expenses is granted.

Susan K. Smith, Chapter 7 Trustee, (“Movant,” “Chapter 7 Trustee”) requests payment of administrative expenses resulting from taxes that are due for the years 2023 and 2024. For the taxable year 2023, Movant requests authority to pay to the Internal Revenue Service (“IRS”) \$16,897 and the California Franchise Tax Board \$7,963 (“FTB”). For 2024, Movant requests authority to pay sums not to exceed \$7,000 to the IRS and \$3,000 to FTB.

Movant argues the following:

1. On April 19, 2022, Debtor commenced the above-captioned bankruptcy case by filing a voluntary Chapter 13 petition. Motion, Docket 143, p. 2:8-9.
2. On November 30, 2022, the case was converted to one under Chapter 7 on November 30, 2022. *Id.* at 2:9-10.
3. On October 1, 2023, the Court granted the Trustee’s application to employ BACHECKI, CROM & CO., LLP (“CPA”) as the bankruptcy estate’s accountant to, among other things, prepare the tax returns. *Id.* at 2:12-14.
4. The CPA has advised that the estate’s: (a) federal tax liabilities due to the IRS to be \$16,897.00 for the fiscal year ended November 30, 2023; and (b) state tax liabilities due to the FTB to be \$7,963.00 for the fiscal year ended November 30, 2023. *Id.* at 2:15-17.
5. The CPA has estimated that: (a) federal tax liabilities due to the IRS to be less than \$7,000.00 for the fiscal year ended 2024; and (b) state tax liabilities due to the FTB to be less than \$3,000.00 for the fiscal year ended 2024. Out of an abundance of caution, the Trustee has requested amounts not to exceed \$7,000.00, and \$3,000.00, respectively, for 2024. *Id.* at 2:18-21.

Movant submits her own Declaration to authenticate the facts therein, testifying as to the amounts owed to the IRS and FTB. Decl., Docket 145 ¶¶ 6, 7.

DISCUSSION

In her motion, Movant cites section 503(b)(1)(B) of the Bankruptcy Code, which states that “there shall be allowed administrative expenses . . . any tax . . . incurred by the estate.”¹¹ U.S.C. 503(b)(1)(B). “If the entire taxable period is postpetition, the income tax will be an administrative expense, provided it is income generated from administration of the estate.” 4 COLLIER, 503.07[a][ii].

Here, Movant has demonstrated that the income tax expenses were incurred postpetition as the case was filed on April 19, 2022, and Movant requests authority to pay taxes incurred for the taxable years 2023 and 2024. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses for the taxable year 2023 in amounts not to exceed \$16,897 to the IRS and \$7,963 to FTB. For 2024, Movant is authorized to pay sums not to exceed \$7,000 to the IRS and \$3,000 to FTB.

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 Administrative Expense filed by Susan K. Smith (“Movant,” “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 is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses for the taxable year 2023 in amounts not to exceed \$16,897 to the Internal Revenue Service (“IRS”) and \$7,963 to the California Franchise Tax Board (“FTB”). For the taxable year 2024, Movant is authorized to pay sums not to exceed \$7,000 to the IRS and \$3,000 to FTB pursuant to 11 U.S.C. § 503(b)(1).