UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 3, 2022 at 10:30 a.m.

1.	**21-23301-E-7** **CRG-1** **1 thru 2**	**BRIAN ROYER** **Carl Gustafson**	**MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **1-5-22 [34]**

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, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2022. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is xxxxx.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, Brian Allen Royer ("Debtor") commonly known as 7720-7722 Locke Road, Vacaville, California ("Property").

A judgment was entered against Debtor's (what appears to be former) spouse, Sara A Royer, [Fn. 1.] in favor of Creditor in the amount of $5,072.29. Exhibit A, Dckt. 38. An abstract of judgment was recorded with Solano County on November 6, 2018, that encumbers the 7722 Locke Road, Vacaville, California. *Id*.

Sara Royer is not a debtor in this bankruptcy case. The court's records show her to have been a debtor in a prior Chapter 13 case, 19-22129, filed jointly with Brian Royer, the Debtor in this case. The prior Chapter 13 case was dismissed on September 12, 2019. [Fn.1.]

FN. 1. Contrary to the Abstract of Judgment information showing that Sara Royer, on Schedule D the Debtor lists, stating such under penalty of perjury and subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, that he, the bankruptcy Debtor is the only person who owes this debt and that there is no other person who owes the debt. It appears that this statement is grossly incorrect.

On the Statement of Financial Affairs Debtor states that he is not married. SOFA, Question 1; Dckt. 13. In response to Question 10, Debtor states that the Solano County DA is enforcing a Family Support Obligation through a wage garnishment. *Id*.

On Schedule A/B Debtor states that he is the sole owner of the real property identified as 7720-7722 Locke Rd., Vacaville, California. Dckt. 16 at 3. However, after stating that Debtor is the only owner, in the Other Information About the Property in that section, Debtor states:

> Land and modular home on permanent foundation
> Primary residence of Debtor's wife and children
> Co-owned with separated spouse
> House needs repairs- move power pole, needs skirting around house, A/C needs repair. Total costs of repair- $40k. FMV $750k as is. Based on broker's opinion.

Id.

This statement under penalty of perjury contradicts the prior statement under penalty of perjury that Debtor is the sole owner of the Property.

This information also states that the Property is not Debtor's residence, but of Debtor's ex (since Debtor states that he is not married) or separated spouse and children. It is not Debtor's residence, but the residence of someone not in bankruptcy.

On Schedule A/B Debtor also states that this is community property.

In Debtor's prior bankruptcy case, 19-22129, filed jointly with Sara Royer, Debtor and Sara

Royer stated under penalty of perjury that they owned real property with an address of 7722 Locke Road, Vacaville, California. 19-22129; Schedule A/B, Dckt. 11 at 3. There is only one address listed for the property in 2019. However, in the current case, Debtor states under penalty of perjury that the addresses 2720-2722 Locke Road, Vacaville, California are the actual, current addresses for the Property. A question arises as to whether there is a second structure built on the property, possible a rental property.

With respect to the Property and correct address(es), at the hearing, counsel for Debtor **xxxxxxx**

On Schedule C, Debtor states under penalty of perjury and subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011 that a homestead exemption is claimed pursuant to California Code of Civil Procedure § 704.730. That section states the amount of a homestead exemption, which is the greater of $300,000 or the median sales price for a single family residence in the same county in the prior year. While stating an amount, it does not state the property in which a homestead exemption may be claimed.

In California Code of Civil Procedure § 704.710(c) what constitutes a homestead in which an exemption may be claim is defined as follows (emphasis added):

> (c) "Homestead" means the **principal dwelling** (1) **in which the judgment debtor** or the **judgment debtor's spouse resided** on the date the judgment creditor's lien attached to the dwelling, and (2) in which the **judgment debtor** or the **judgment debtor's spouse** resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

The judgment lien for Capital One was recorded on November 5, 2018. Exhibit A; Dckt. 38. The judgment debtor is Sara Royer, not the Debtor in this case. The Debtor, who is asserting the homestead exemption is not the judgment debtor, nor is he residing in the Property.

The term "spouse" is defined in California Code of Civil Procedure § 704(c) to be limited as follows (emphasis added):

> (d) "Spouse" **does not** include a married person following entry of a judgment **decreeing legal separation of the parties**, unless such married persons reside together in the same dwelling.

Debtor states that he is separated, and on the Statement of Financial Affairs there is a family support order being enforced against him, indicating that he elected not to pay the obligation but that it had to be enforced through a dissolution proceeding, after a legal separation or dissolution of marriage. Thus, it appears that Debtor and his separated spouse are not "spouses" for purposes of a homestead

exemption.

The term "Family Unit" for purposes of a homestead exemption is also defined in 11 U.S.C. § 704.710(b) [emphasis added] as:

> (b) "Family unit" means any of the following:
>
> (1) The judgment debtor and the judgment debtor's spouse **if the spouses reside together in the homestead**.
>
> (2) The **judgment debtor and at least one of the following persons** who the judgment debtor cares for or maintains in the homestead:
>
> > (A) The **minor child** or minor grandchild **of the judgment debtor** or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.
> >
> > (B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.
> >
> > (C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.
> >
> > (D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.
>
> (3) The **judgment debtor's spouse** and at least one of the persons listed in paragraph (2) **who the judgment debtor's spouse cares** for or maintains in the homestead.

Based on the information provided by Debtor under penalty of perjury, he does not meet the requirements for Debtor being part of a "family unit" for purposes of claiming a homestead exemption in this Contested Matter.

Debtor, as the "mere" bankruptcy debtor is not the judgment debtor on the state court judgment for which the judgment lien has been recorded. The Debtor does not reside in the Property. It is Sara Royer who is the judgment debtor, it is Sara Royer who resides in the Property, and the Debtor appears to be a proxy for a homestead exemption to be claimed.

On Amended Schedule J, Debtor affirmatively states "Debtor lives at Klamath Drive property and pays for his half share of rent. His girlfriend pays for other half." Dckt. 28 at 3. This is an affirmative statement that the Property is not Debtor's residence.

On the Statement of Financial Affairs, Question 2, Debtor states that from June 2020 to May 2021 Debtor lives at 2156 Calder Place, Fairfield, California, and at 7720-7722 Locke Rd, Vacaville,

California from 2006 through June 2020. Dckt. 13 at 1. Thus, Debtor was not residing in the Property for fifteen (15) months prior to the Bankruptcy Case being filed. [Fn.2.]

FN. 2. To address a split of authorities in the Circuit which addresses the evidentiary value of a claim of exemption in a bankruptcy case that is not opposed (or not opposed by a creditor against whom a contested matter is subsequently commenced) with respect to a motion to avoid a lien under 11 U.S.C. § 522(f):

> (d) Avoidance by debtor of transfers of exempt property. A proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Fed. R. Bankr. P. Bankruptcy 4003 (d). This is discussed in Collier on Bankruptcy

> This provision resolved a dispute in the case law. Compare *Allen v. Green (In re Green)*, 31 F.3d 1098, 31 C.B.C.2d 1449 (11th Cir. 1994), and *In re Indvik*, 23 C.B.C.2d 948, 118 B.R. 993 (Bankr. N.D. Iowa 1990) (valuation of the exempt property may not be raised as a defense to a lien avoidance motion if it has not been raised by an objection to exemption), with *In re Schoonover*, 331 F.3d 575 (7th Cir. 2003) (lienholder need not object within Rule 4003(b) deadline in order to challenge valuation in Rule 4003(d) motion to avoid lien), and *Crowell v. Theodore Bender Accounting (In re Crowell)*, 138 F.3d 1031, 39 C.B.C.2d 1389 (5th Cir.), mandamus denied, 525 U.S. 807 119 S. Ct. 281 142 L. Ed. 2d 232 (1998) (lienholder is not precluded from challenging whether rural homestead is available in proceeding to invalidate lien even though trustee had withdrawn timely objection to exemption). This is not to say that there cannot be other types of disputes about the meaning of the debtor's exemption claim. *See Preblich v. Battley*, 181 F.3d 1048 (9th Cir. 1999) (exemption schedule listing only wages did not encompass payments received by escrow accounts); *Williams v. Peyton (In re Williams)*, 104 F.3d 688 (4th Cir. 1997) (debtor's claim of an interest in entireties property as exempt was construed, in light of circuit case law, to be claim only that interest was exempt from nonjoint creditors, and not from joint creditors)*; Heintz v. Carey (In re Heintz)*, 36 C.B.C.2d 753, 198 B.R. 581 (B.A.P. 9th Cir. 1996).

9 Collier on Bankruptcy P 4003.03 (16th 2021)

Bankruptcy Law Relating to Non-Judgement Debtor Avoiding Lien

Additionally, the court looks to 11 U.S.C. § 522(f) and subsequent case law to determine whether a judicial lien in a non-debtor spouse's name can be avoided. United States Bankruptcy Code

§ 522(f)(1) provides "that the [bankruptcy] debtor may avoid the fixing of a lien on an interest of the [bankruptcy] debtor in property to the extent that such lien impairs an exemption to which the [bankruptcy] debtor would have been entitled under subsection (b) of this section, if such lien is - (A) a judicial lien...".

United States Bankruptcy Code § 522(f)(1) requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest. *Farrey v. Sanderfoot*, 500 U.S. 291, 301 (1991).

In *In re Obedian*, 546 B.R. 409 (Bank. C.D. Cal. 2016), Chapter 7 debtor filed a motion to avoid judgment lien of California Department of Health Care Services (DHCS) against certain real property. *Id*. at 409. The bankruptcy debtor and the non-bankruptcy debtor spouse bought the subjected real property in 2009 and the judgment was recorded on February 22, 2011, but only against Mr. Obedian (non-bankruptcy debtor spouse). *Id*. at 411. The bankruptcy debtor presented evidence that the property in *Obedian* was community property and the residence of the bankruptcy debtor and non-bankruptcy judgement debtor spouse:

> Although Debtor and Mr. Obedian are currently undergoing marital dissolution proceedings, there is no evidence in the record to show that Debtor and Mr. Obedian ever lived separate and apart when they bought the Real Property in 2009, when they made the mortgage payments on this property, and when the DHCS judgment lien against Mr. Obedian attached to their community property in 2011 through recordation of an abstract of a money judgment with the Los Angeles County Recorder. California Family Code § 910(a) and (b) (generally "the community estate is liable for a debt incurred by either spouse before or during marriage [except while living separate and apart], regardless of which spouse has management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt"); California Code of Civil Procedure § 697.310(a) (recording abstract of judgment in county where property is situated creates a judgment lien against real property).

Id., 546 B.R. at 414.

The court found that although the judgment was against Mr. Obedian alone, the judgment lien attached to the *community property interests* of both spouses because the judgment debt was incurred during marriage and the judgment lien was created through an abstract judgment recorded in Los Angeles County in 2011, after the real property was acquired. *Id*. at 424. Therefore, the non-judgment debtor who filed bankruptcy could use 11 U.S.C. § 522(f) to avoid the lien on the property in which he resided.

Here, Debtor states he has an interest in the real property located at 7720-7722 Locke Road, Vacaville, California ("Property"). The judicial lien attached to this Property is in the name of Sara A. Royer, debtor's non-filing spouse. Exhibit A, Dckt. 38. The lien was recorded in Solano County on November 6, 2018. *Id*. Debtor has not provided any evidence indicating his possessory interest has changed simultaneously or after this lien was attached to the Property. Therefore, as in *Obedian*, Debtor is able to avoid this lien because his interest in the property existed prior to the fixing of this lien.

Amount of Homestead Exemption

On Schedule C Debtor lists a homestead exemption in the amount of $489,754 in the Property pursuant to California Code of Civil Procedure § 704.730, apparently claiming that the median sales price for a single-family home in 2020 (the calendar year prior to the 2021 filing of this case) was $489,754, rather than claiming the set statutory amount of $300,000.

A median (which is the middle value, not average, of sales prices) sales price, for which there was an equal number higher and equal number lower, of $489,754 is an odd number. Generally, one does not expect to see an odd ending number of dollars, but more likely $489,750. The $489,754 appears what could be an average of sales prices, not the median.

On Schedule D, Debtor lists the Property, stating its value and identifying the liens encumbering the Property as follows:

Property Value	$750,000
Liens	
Capital One Judgement Lien	($5,072)
Charlene Barnes Judgment Lien	($268,000)
Specialized Loan Servicing DOT	($265,167)
	==========
Value in Excess of Liens	$211,761

However, if one computes the value in excess of the liens subtracting only the Specialized Loan Servicing secured claim, for which there is a consensual deed of trust, the following computation result is obtained:

Property Value	$750,000
Liens	
Specialized Loan Servicing DOT	($265,167)
	==========
Value in Excess of Consensual Lien	$484,833

This $484,833 is within 1% of the $489,754 exemption amount claimed on Schedule C. This creates an appearance that the exemption amount is not one computed as required under California Code of Civil Procedure § 704.730, but is an engineered number based on the value of the Property so as to

exhaust all equity in it.

At the hearing, **xxxxxxx**

~~Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $750,000.00 as of the petition date. Dckt. 16. The unavoidable consensual liens that total $265,167.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 16. The court notes that Specialized Loan Servicing, Creditor holding consensual lien, has not filed a proof of claim. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $489,754.00 on Schedule C. Dckt. 16.~~

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

~~**ISSUANCE OF A COURT-DRAFTED ORDER**~~

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

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

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

~~**IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Solano County Case No. FCM160160, recorded on November 6, 2018, Document No. 201800075618, with the Solano County Recorder, against the real property commonly known as 7720-7722 Locke Road, Vacaville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

2. **21-23301-E-7** **BRIAN ROYER** **MOTION TO AVOID LIEN OF JOHN GAJKOWSKI**
CRG-2 **Carl Gustafson** **1-5-22 [43]**

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2022. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is xxxxx.

This Motion requests an order avoiding the judicial lien of John Gajkowski ("Creditor") against property of the debtor, Brian Allen Royer ("Debtor") commonly known as 7720-7722 Locke Road, Vacaville, California ("Property"). [Fn.1.]

FN. 1. An Adversary Proceeding has been filed by Charlene Barnes, who is the successor in interest to John Gajkowski (his daughter) seeking to have this judgment obligation determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

A judgment was entered against Debtor and the non-bankruptcy judgment debtor, Debtor's (what appears to be former) spouse, Sara A Royer in favor of Creditor in the amount of $385,038.54. Exhibit B, Dckt. 48. An abstract of judgment was recorded with Solano County on February 16, 2018,

that encumbers the Property. *Id.* [Fn.2.]

FN. 2. Contrary to the Abstract of Judgment information showing that Sara Royer, on Schedule D the Debtor lists, stating such under penalty of perjury and subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, that he, the bankruptcy Debtor is the only person who owes this debt and that there is no other person who owes the debt. It appears that this statement is grossly incorrect. Schedule D, ¶ 2.22; Dckt. 16 at 12.

On the Statement of Financial Affairs Debtor states that he is not married. SOFA, Question 1; Dckt. 13. In response to Question 10, Debtor states that the Solano County DA is enforcing a Family Support Obligation through a wage garnishment. *Id*.

On Schedule A/B Debtor states that he is the sole owner of the real property identified as 7720-7722 Locke Rd., Vacaville, California. Dckt. 16 at 3. However, after stating that Debtor is the only owner, in the Other Information About the Property in that section, Debtor states:

> Land and modular home on permanent foundation
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> Co-owned with separated spouse
> House needs repairs- move power pole, needs skirting around house, A/C needs repair. Total costs of repair- $40k. FMV $750k as is. Based on broker's opinion.

Id.

This statement under penalty of perjury contradicts the prior statement under penalty of perjury that Debtor is the sole owner of the Property.

This information also states that the Property is not Debtor's residence, but of Debtor's ex (since Debtor states that he is not married) or separated spouse and children. It is not Debtor's residence, but the residence of someone not in bankruptcy.

On Schedule A/B Debtor also states that this is community property.

In Debtor's prior bankruptcy case, 19-22129, filed jointly with Sara Royer, Debtor and Sara Royer stated under penalty of perjury that they owned real property with an address of 7722 Locke Road, Vacaville, California. 19-22129; Schedule A/B, Dckt. 11 at 3. There is only one address listed for the property in 2019. However, in the current case, Debtor states under penalty of perjury that the addresses 2720-2722 Locke Road, Vacaville, California are the actual, current addresses for the Property. A question arises as to whether there is a second structure built on the property, possible a rental property.

With respect to the Property and correct address(es), at the hearing, counsel for Debtor **xxxxxxx**

On Schedule C, Debtor states under penalty of perjury and subject to the certifications arising

under Federal Rule of Bankruptcy Procedure 9011 that a homestead exemption is claimed pursuant to California Code of Civil Procedure § 704.730. That section states the amount of a homestead exemption, which is the greater of $300,000 or the median sales price for a single family residence in the same county in the prior year. While stating an amount, it does not state the property in which a homestead exemption may be claimed.

In California Code of Civil Procedure § 704.710(c) what constitutes a homestead in which an exemption may be claim is defined as follows (emphasis added):

> (c) "Homestead" means the **principal dwelling** (1) **in which the judgment debtor** or the **judgment debtor's spouse resided** on the date the judgment creditor's lien attached to the dwelling, and (2) in which the **judgment debtor** or the **judgment debtor's spouse** resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

The judgment lien for Creditor One was recorded on February 16, 2018. Exhibit B; Dckt. 48. The judgment debtors are Debtor and non-bankruptcy debtor (ex/separated) former spouse Sara Royer. The Debtor, who is asserting the homestead exemption is one of the judgment debtor, but he is not residing in the Property.

The term "spouse" is defined in California Code of Civil Procedure § 704(c) to be limited as follows (emphasis added):

> (d) "Spouse" **does not** include a married person following entry of a judgment **decreeing legal separation of the parties**, unless such married persons reside together in the same dwelling.

Debtor states that he is separated, and on the Statement of Financial Affairs there is a family support order being enforced against him, indicating that he elected not to pay the obligation but that it had to be enforced through a dissolution proceeding, after a legal separation or dissolution of marriage. Thus, it appears that Debtor and his separated spouse are not "spouses" for purposes of a homestead exemption.

The term "Family Unit" for purposes of a homestead exemption is also defined in 11 U.S.C. § 704.710(b) [emphasis added] as:

> (b) "Family unit" means any of the following:
>
> (1) The judgment debtor and the judgment debtor's spouse **if the spouses reside together in the homestead**.

(2) The **judgment debtor and at least one of the following persons** who the judgment debtor cares for or maintains in the homestead:

(A) The **minor child** or minor grandchild **of the judgment debtor** or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The **judgment debtor's spouse** and at least one of the persons listed in paragraph (2) **who the judgment debtor's spouse cares** for or maintains in the homestead.

Based on the information provided by Debtor under penalty of perjury, he does not meet the requirements for Debtor being part of a "family unit" for purposes of claiming a homestead exemption in this Contested Matter.

Debtor, as the "mere" bankruptcy debtor is not the judgment debtor on the state court judgment for which the judgment lien has been recorded. The Debtor does not reside in the Property. It is Sara Royer who is the judgment debtor, it is Sara Royer who resides in the Property, and the Debtor appears to be a proxy for a homestead exemption to be claimed.

On Amended Schedule J, Debtor affirmatively states "Debtor lives at Klamath Drive property and pays for his half share of rent. His girlfriend pays for other half." Dckt. 28 at 3. This is an affirmative statement that the Property is not Debtor's residence.

On the Statement of Financial Affairs, Question 2, Debtor states that from June 2020 to May 2021 Debtor lives at 2156 Calder Place, Fairfield, California, and at 7720-7722 Locke Rd, Vacaville, California from 2006 through June 2020. Dckt. 13 at 1. Thus, Debtor was not residing in the Property for fifteen (15) months prior to the Bankruptcy Case being filed. [Fn 3.]

FN. 3. To address a split of authorities in the Circuit which addresses the evidentiary value of a claim of exemption in a bankruptcy case that is not opposed (or not opposed by a creditor against whom a contested matter is subsequently commenced) with respect to a motion to avoid a lien under 11 U.S.C. § 522(f):

(d) Avoidance by debtor of transfers of exempt property. A proceeding under §

> 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a request under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Fed. R. Bankr. P. Bankruptcy 4003 (d). This is discussed in Collier on Bankruptcy

> This provision resolved a dispute in the case law. Compare *Allen v. Green (In re Green)*, 31 F.3d 1098, 31 C.B.C.2d 1449 (11th Cir. 1994), and *In re Indvik*, 23 C.B.C.2d 948, 118 B.R. 993 (Bankr. N.D. Iowa 1990) (valuation of the exempt property may not be raised as a defense to a lien avoidance motion if it has not been raised by an objection to exemption), with *In re Schoonover*, 331 F.3d 575 (7th Cir. 2003) (lienholder need not object within Rule 4003(b) deadline in order to challenge valuation in Rule 4003(d) motion to avoid lien), and *Crowell v. Theodore Bender Accounting (In re Crowell)*, 138 F.3d 1031, 39 C.B.C.2d 1389 (5th Cir.), mandamus denied, 525 U.S. 807 119 S. Ct. 281 142 L. Ed. 2d 232 (1998) (lienholder is not precluded from challenging whether rural homestead is available in proceeding to invalidate lien even though trustee had withdrawn timely objection to exemption). This is not to say that there cannot be other types of disputes about the meaning of the debtor's exemption claim. *See Preblich v. Battley*, 181 F.3d 1048 (9th Cir. 1999) (exemption schedule listing only wages did not encompass payments received by escrow accounts); *Williams v. Peyton (In re Williams)*, 104 F.3d 688 (4th Cir. 1997) (debtor's claim of an interest in entireties property as exempt was construed, in light of circuit case law, to be claim only that interest was exempt from nonjoint creditors, and not from joint creditors)*; Heintz v. Carey (In re Heintz)*, 36 C.B.C.2d 753, 198 B.R. 581 (B.A.P. 9th Cir. 1996).

9 Collier on Bankruptcy P 4003.03 (16th 2021)

Bankruptcy Law Relating to Non-Judgement Debtor
Avoiding Lien

Additionally, the court looks to 11 U.S.C. § 522(f) and subsequent case law to determine whether a judicial lien in a non-debtor spouse's name can be avoided. United States Bankruptcy Code § 522(f)(1) provides "that the [bankruptcy] debtor may avoid the fixing of a lien on an interest of the [bankruptcy] debtor in property to the extent that such lien impairs an exemption to which the [bankruptcy] debtor would have been entitled under subsection (b) of this section, if such lien is - (A) a judicial lien...".

United States Bankruptcy Code § 522(f)(1) requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest. *Farrey v. Sanderfoot*, 500 U.S. 291, 301 (1991).

In *In re Obedian*, 546 B.R. 409 (Bank. C.D. Cal. 2016), Chapter 7 debtor filed a motion to

avoid judgment lien of California Department of Health Care Services (DHCS) against certain real property. *Id*. at 409. The bankruptcy debtor and the non-bankruptcy debtor spouse bought the subjected real property in 2009 and the judgment was recorded on February 22, 2011, but only against Mr. Obedian (non-bankruptcy debtor spouse). *Id*. at 411. The bankruptcy debtor presented evidence that the property in *Obedian* was community property and the residence of the bankruptcy debtor and non-bankruptcy judgement debtor spouse:

> Although Debtor and Mr. Obedian are currently undergoing marital dissolution proceedings, there is no evidence in the record to show that Debtor and Mr. Obedian ever lived separate and apart when they bought the Real Property in 2009, when they made the mortgage payments on this property, and when the DHCS judgment lien against Mr. Obedian attached to their community property in 2011 through recordation of an abstract of a money judgment with the Los Angeles County Recorder. California Family Code § 910(a) and (b) (generally "the community estate is liable for a debt incurred by either spouse before or during marriage [except while living separate and apart], regardless of which spouse has management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt"); California Code of Civil Procedure § 697.310(a) (recording abstract of judgment in county where property is situated creates a judgment lien against real property).

Id., 546 B.R. at 414.

The court found that although the judgment was against Mr. Obedian alone, the judgment lien attached to the *community property interests* of both spouses because the judgment debt was incurred during marriage and the judgment lien was created through an abstract judgment recorded in Los Angeles County in 2011, after the real property was acquired. *Id*. at 424. Therefore, the non-judgment debtor who filed bankruptcy could use 11 U.S.C. § 522(f) to avoid the lien on the property in which he resided.

Here, Debtor states he has an interest in the real property located at 7720-7722 Locke Road, Vacaville, California ("Property"). The judicial lien attached to this Property is in the name of Sara A. Royer, debtor's non-filing spouse. Exhibit A, Dckt. 38. The lien was recorded in Solano County on November 6, 2018. *Id*. Debtor has not provided any evidence indicating his possessory interest has changed simultaneously or after this lien was attached to the Property. Therefore, as in *Obedian*, Debtor is able to avoid this lien because his interest in the property existed prior to the fixing of this lien.

Amount of Homestead Exemption

On Schedule C Debtor lists a homestead exemption in the amount of $489,754 in the Property pursuant to California Code of Civil Procedure § 704.730, apparently claiming that the median sales price for a single-family home in 2020 (the calendar year prior to the 2021 filing of this case) was $489,754, rather than claiming the set statutory amount of $300,000.

A median (which is the middle value, not average, of sales prices) sales price, for which there was an equal number higher and equal number lower, of $489,754 is an odd number. Generally, one does not expect to see an odd ending number of dollars, but more likely $489,750. The $489,754 appears what could be an average of sales prices, not the median.

On Schedule D, Debtor lists the Property, stating its value and identifying the liens encumbering the Property as follows:

Property Value	$750,000
Liens	
Capital One Judgement Lien	($5,072)
Charlene Barnes Judgment Lien	($268,000)
Specialized Loan Servicing DOT	($265,167)
	==========
Value in Excess of Liens	$211,761

However, if one computes the value in excess of the liens subtracting only the Specialized Loan Servicing secured claim, for which there is a consensual deed of trust, the following computation result is obtained:

Property Value	$750,000
Liens	
Specialized Loan Servicing DOT	($265,167)
	==========
Value in Excess of Consensual Lien	$484,833

This $484,833 is within 1% of the $489,754 exemption amount claimed on Schedule C. This creates an appearance that the exemption amount is not one computed as required under California Code of Civil Procedure § 704.730, but is an engineered number based on the value of the Property so as to exhaust all equity in it.

At the hearing, **xxxxxxx**

~~Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $750,000.00 as of the petition date. Dckt. 16. The unavoidable consensual liens that total $265,167.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 16. The court notes that Specialized Loan Servicing, Creditor holding consensual lien, has not filed a proof of claim. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $489,754.00 on Schedule C. Dckt. 16.~~

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no~~

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of John Gajkowski, California Superior Court for Solano County Case No. FCS047960, recorded on February 16, 2018, Document No. 201800011673, with the Solano County Recorder, against the real property commonly known as 7720-7722 Locke Road, Vacaville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. **21-22211-E-7** **KUSHAL HEERA** **MOTION TO SELL**
DNL-2 **Timothy Walsh** **2-10-22 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. 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 J. 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 personal property commonly known as 510 shares of common stock in Altamire Corporation ("Property").

The proposed purchaser of the Property is Randhir S. Kang ("Buyer"), and the terms of the sale are:

A. Movant shall sell, and Buyer shall purchase, the bankruptcy estate's interest in the Property for the sum of $10,000.00 payable within three (3) business days following the date of an entry of an order by the Bankruptcy Court approving this agreement.

B. The sale is subject to Bankruptcy Court approval and overbidding at a

duly noticed hearing.

C. Buyer's obligations under the terms of this sale are contingent upon the entry of an order by the Bankruptcy Court in the form and substance satisfactory to the Buyer in his sole discretion.

D. Movant and Buyer shall exchange mutual releases. Buyer's release includes any and all claims that have been asserted or could be asserted against Debtor's bankruptcy estate. Movant and Buyer waive the general release provision of Cal. Civ. Code § 1542.

Overbidding Procedures

Trustee proposes the following overbidding procedures for the sale, requiring a prospective overbidder prior to the hearing on this Motion to:

1. Provide Movant with a cashier's check in the amount of $12,000.00 and proof of funds of an additional $8,000.00. The $12,000.00 includes the $10,000.00 sum of the Property and the first overbid in the amount of $2,000.00.

2. Conform any further overbidding in increments of at least $1,000.00.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because creditors will benefit from the sale proceeds, prospective buyers interested in bidding more will have an opportunity to do so through the conclusion of the sale hearing, and the proposed sale is made in good faith by Movant to maximize the net return to the estate.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Movant does not anticipate any opposition to this Motion and waiver of the fourteen-day stay period will allow the sale to move forward immediately upon entry of a Bankruptcy Court order approving the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

hearing.

The Motion to Sell Property filed by J. 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Randhir S. Kang or nominee ("Buyer"), the Property commonly known as 510 shares of common stock in Altamira Corporation ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $10,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 26, and as further provided in this Order.

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

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

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

4. **21-24233-E-7** **BOBBIE MCMAHAN** **MOTION TO AVOID LIEN OF RBS CITIZENS, N.A.**
NF-1 **Nikki Farris** **1-19-22 [12]**

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's Attorney, Chapter 7 Trustee, RBS Citizens, N.A., Citizens Financial Group, Inc., and Office of the United States Trustee on January 24, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is xxxxxxx .

This Motion requests an order avoiding the judicial lien of RBS Citizens, N.A. ("Creditor") against property of the debtor, Bobbie Gail McMahan ("Debtor") commonly known as 12 Garden Park Drive, Chico CA 95973, California ("Property").

Debtor asserts that Creditor hold a judicial lien against the Property "in the amount of $225,000.00." Motion, Dckt. 12.

Debtor has not provided a copy of the recorded abstract of judgment. Rather, there is a copy of an abstract of judgment issued on May 14, 2018, for the judgment entered on January 6, 2015. Exhibit, Dckt. 14 at 11.

Included with the Exhibits is what appears to be a portion of an unauthenticated preliminary title report. *Id*. at 12-13. Item 10 is for an abstract of judgment for Creditor in the amount of $150,728.83, which is stated to have been recorded on June 5, 2018. The recording information is stated

to be "Recorded in: Butte County Official Records Serial No. 2018-19030. *Id*. at 10.

There is no date given for when the unauthenticated excerpt from a preliminary title report was generated. However, the current property tax information is November 2019 and February 2020.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $415,400.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $157,221.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. The court notes that Debtor's Motion refers to Schedule D in Exhibit 1, however, Exhibit 1 does not appear to contain Schedule D. See Exhibit 1, Dckt. 14. The court may refer to Debtor's voluntary petition (Dckt. 1) for Schedule D, but Debtor is reminded that such relevant information should be included in Debtor's Exhibits.

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $33,179.00 on Schedule C. Dckt. 1. However, in Debtor's Motion, Debtor claims an exemption in the amount of $258,179.00. Motion at 2, Dckt. 12. It appears Debtor inadvertently wrote their Net Equity as a claimed exemption on Schedule C, rather than their proper Homestead Exemption.

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

~~**ISSUANCE OF A COURT-DRAFTED ORDER**~~

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

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

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

~~**IT IS ORDERED** that the judgment lien of RBS Citizens, N.A., California Superior Court for Contra Costa County Case No. CIVMSC13-02020, recorded on June 5, 2018, [Document No. xxxx / Book xxxx and Page xxxx], with the Butte County Recorder, against the real property commonly known as 12 Garden Park Drive, Chico, CA 95973, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

5. **19-24134-E-7** **FELIX/DEBORAH KIARSIS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, SPECIAL COUNSEL(S)**
DNL-3 **Bruce Dwiggins** **2-9-22 [92]**

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, parties requesting special notice, and Office of the United States Trustee on February 9, 2022. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Chapter 7 Trustee Nikki B. Farris ("Applicant") makes a First and Final Request for the Allowance of Fees and Expenses in this case to her special counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC").

Fees are requested for the period June 1, 2021, through February 8, 2022. The order of the court approving employment of Applicant was entered on June 1, 2021. Dckt. 65. Applicant requests fees in the amount of $13,200.00 and costs in the amount of $396.35.

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 DNLC's services for the Estate include assisting the Applicant in her negotiations with adverse parties to resolve a claim among the assets of the Estate. The Estate's gross recovery under a settlement agreement between Applicant and adverse parties totals $40,000.00. The court finds the services were beneficial to Applicant 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.

Adversary Proceedings: DNLC spent 50.80 hours in this category. DNLC drafted the complaint, prepared and attended status conferences, assisted Applicant in negotiating and drafting the settlement agreement with adverse parties, filing dismissals, preparing fee and employment applications, and finalizing the terms of the settlement agreement.

Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered from the settlement. DNLC represented Applicant in litigation to assist Applicant in resolving a dispute with adverse parties in connection with a claim, for which Applicant agreed to a contingent fee of 33% of the gross recovery (Fee Agreement, Dckt. 60). In approving the employment of DNLC, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). $40,000.00 of gross monies (exclusive of these requested fees and costs) was recovered for Applicant.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $396.35 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing fees	N/A	$365.23
Copying	$0.10	$31.12
Total Costs Requested in Application		$396.35

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Applicant are reasonable and a fair method of computing the fees of DNLC in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $13,200.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay 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 $396.35 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 case.

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

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

Fees	$13,200.00
Costs and Expenses	$396.35

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 Nikki B. Farris ("Applicant"), the Chapter 7 Trustee, for special counsel Desmond, Nolan, Livaich & Cunningham ("DNLC"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

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

DNLC, Professional employed by the Chapter 7 Trustee

Fees in the amount of $13,200.00
Expenses in the amount of $396.35,

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

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

6. **20-21949-E-13 EJS-2** **MARIA MORALES** **Eric Schwab** **MOTION TO INCUR DEBT** **2-17-22 [53]**

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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 Incur Debt is granted.

Maria Luisa Morales ("Debtor") seeks permission to refinance her mortgage at real property commonly known as 3110 Hopscotch Way, Roseville, CA 95747 ("Property"), with new monthly mortgage payments of $3,004.93 to Big Valley Mortgage over 360 months with a 3.125% fixed interest rate.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Chapter 13 Plan

Pursuant to the terms of the confirmed Chapter 13 Plan, Debtor agreed to make payments in the amount of $6,800.00 from May 2020 through August 2020 and pay $1,960.00 per month from September 2020 through April 2025 with no less than 100% paid to Debtor's Class 7 general unsecured creditors. Dckt. 54 at ¶ 1. Debtor is current in all payments required by the Plan, and Debtor's Plan is not in default. *Id.* at ¶ 2-3.

Reasonableness

Debtor seeks to refinance her mortgage to pay off the estimated Chapter 13 Plan balance of $49,354.00 or less, with creditors receiving 100% of their claims. Dckt. 53 at ¶ 4. The value of Property is $620,000.00. *Id.* The refinance mortgage will be a single loan incurred only to refinance existing debt encumbering Debtor's Property. *Id.* at ¶ 5.

Best Interest of Debtor

Debtor asserts the new monthly mortgage payment is less than the mortgage payment contract and Chapter 13 payment being made currently. Dckt. 53 at ¶ 8. Debtor claims they will be able to afford all property taxes, insurances and living expenses with their regular monthly income. Declaration in Support of Motion to Incur Debt, Dckt. 57 at ¶ 9.

Trustee's Response

On February 23, 2022, Chapter 13 Trustee filed a response stating Debtor fails to provide the details of the loan as Debtor does not state that the copy of the loan and the closing details are provided in Exhibit A. Dckt. 61. Additionally, the loan agreement does not state the new monthly mortgage payment, that is only evidenced in Debtor's Motion.

Additionally, Debtor did not file an Estimated Closing Statement. Therefore, the Trustee cannot determine if the proceeds are sufficient to pay all creditors at 100% and whether Debtor's second mortgage is contemplated in the refinancing of the loan.

Trustee's concerns are valid and should be addressed prior to granting this motion.

At the hearing, XXXXXXXXXX

~~The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.~~

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

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

~~The Motion to Incur Debt filed by Maria Luisa Morales ("Debtor") having been presented to the court, and upon review of the pleadings, evidence,~~

~~arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Maria Luisa Morales is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 58.~~

7. **20-23267-E-7** **SHON/JILL TREANOR** **MOTION TO SELL**
DNL-13 **Pro Se** **2-10-22 [414]**
7 thru 9

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. 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 pursuant to 11 U.S.C. § 363(b),
and
the request relief for Sale Free and Clear of Liens, no legal authority or grounds given, is denied without prejudice.

The Bankruptcy Code permits Hank M. Spacone, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 4390 Emerald Ridge, California ("Property").

The proposed purchaser of the Property is Robert Beronio and Janene Beronio, and the terms of the sale are:

A. Purchase Price: $1,600,000.00;

B. Close of Escrow: The latter of thirty (30) days after acceptance or fifteen (15) calendar days of entry of a Bankruptcy Court order approving the Agreement;

C. Initial Deposit: $75,000.00, 4.7% of purchase price;

D. Seller will pay off the balance of Solar City/Tesla leased solar system at close of escrow;

E. Place Title Company shall provide escrow and title services;

Exhibit J, Dckt. 416.

Denial of Request for Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of:

1. Bank of America, NA - Short Form Deed of Trust (Exhibit B, Dckt. 416 at 28-33),

2. Sungevity Citi Lessor - UCC Financing Statement (Exhibit C, Dckt. 416 at 34-36),

3. Sungevity - Notice of an Independent Solar Energy Producer Contract (Exhibit D, Dckt. 416 at 37-41),

4. SolarCity Corporation - UCC Financing Statement (Exhibit E, Dckt. 416 at 42-44),

5. SolarCity - Notice of an Independent Solar Energy Producer Contract (Exhibit F, Dckt. 416 at 45-46),

6. Mark Bandy and the Law Office of Jeffrey Paper PC -Deed of Trust and Assignment of Rents (Exhibit G, Dckt. 416 at 47-54),

7. Steven C. Sanders of Sanders & Associates - Deed of Trust and Assignment of Rents (Exhibit H, Dckt. 416 at 55-63),

8. Sungevity - UCC Financing Statement (Exhibit I, Dckt. 416 at 64-65),

("Creditors"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

11 U.S.C. § 363(f)(1)–(5).

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* 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.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

A. "[Applicant] moves for an order . . . providing that the sale of the Subject Property shall be free and clear of the [above listed] liens and encumbrances."

Those "grounds" are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant has provided exhibits for each of the liens to be sold free and clear of liens. However, Movant has not established with particularity grounds in the Motion for why the liens should be sold free and clear.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states no grounds upon which the court is to authorize a sale free and clear of liens. No amounts are given for the secured claims listed in the Motion and no computation is given showing the ground that the sale will generate proceeds sufficient to pay the claims in full or other ground for the exercise of the authority granted by Congress in 11 U.S.C. § 363(f).

The court notes that in the Points and Authorities, which are to state the legal points, arguments, and legal authorities, there two pages of various factual grounds stated, as legal arguments and authorities, for why relief pursuant to 11 U.S.C. § 363(f) could be proper.

The court declines the opportunity to determine and state for the Trustee, subject to the Federal Rule of Bankruptcy Procedure 9011 certifications, the grounds (as opposed to mere legal conclusions) in the Motion for this extraordinary 11 U.S.C. § 363(f) relief.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows Applicant to sell the property for $1,600,000.00 and pay a significant portion of undisputed liens and encumbrances on the estate.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately $80,000.00 As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court for no stated reason.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court

waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h). Rather, only a mere, half a sentence prayer that such relief be given is made. Motion, p. 2:4; Dckt. 414. Such requested relief for which there is only a prayer is not granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Hank M. Spacone, 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 Hank M. Spacone, the Chapter 7 Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(1)-(5) to Robert Beronio and Janene Beronio ("Buyer"), the Property commonly known as 4390 Emerald Ridge Lane, Fairfield, California("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $1,6000,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit J, Dckt. 416, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> ~~C. The Property is sold free and clear of the lien of Bank of America, N.A.; Sungevity Citi Lessor LLC; Sungevity; Solarcity Corporation; Solarcity; Mark Brandy and the Law Office of Jeffrey Pape, P.C.; Steven C. Sanders of Sanders & Associates; and Sungevity, Creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(1)-(5), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~
>
> D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 5.0 percent of the actual purchase price upon consummation of the sale. The 5.0 percent commission shall be paid to the Chapter 7 Trustee's broker, Coldwell Banker Kappel Gateway Realty.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

8.	**20-23267-E-7** **DNL-16**	**SHON/JILL TREANOR** **Pro Se**	**MOTION FOR FINDING BUYER OF REAL PROPERTY IS A GOOD FAITH PURCHASER** **2-16-22 [430]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion for Finding Buyer of Real Property is a Good Faith Purchaser is xxxxxxx .

The chapter 7 trustee filed this Motion seeking relief related to the Trustee's Motion To Sell (Dckt. 414) to sell free and clear of liens the real property located at 4390 Emerald Ridge Lane, Fairfield, California (the "Property") to Robert Beronio and Janene Beronio (the "Buyers") for $1.6 Million pursuant to 11 U.S.C. § 363(b) and § 363(f).

The relief requested by the present Motion is a determination pursuant to 11 U.S.C. § 363(m)

that the Buyers, or any successful overbidder, are a good faith purchaser.

11 U.S.C. § 363(m)
& Statutory Mootness

11 U.S.C. § 363(m) provides that the reversal or modification on appeal of an authorization under 11 U.S.C. § 363(b) or (c) of a sale or lease of property does not affect the validity of that sale or lease to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 3 Collier on Bankruptcy P 363.11 (16th 2021).

This provision of the Bankruptcy Code confers statutory mootness to any appeal of an order authorizing a sale or lease so long as (1) the purchaser acted in good faith, and (2) the appellant failed to obtain a stay of the sale pending appeal. *Id.*

Section 363(m) expressly applies to a "sale or lease." Therefore, 11 U.S.C. § 363(m) addresses only changes of title or other essential attributes of a sale, together with the changes of authorized possession that occur with leases. *In re PW, LLC*, 391 B.R. 25, 35–36 (B.A.P. 9th Cir. 2008). The terms of those sales, including whether the sale is "free and clear," is not protected. *Id.*

Generally, the Federal Rules of Bankruptcy Procedure 6004(h) stay of an order authorizing sale or lease of property provides a prospective appellant at least 14 days to file an appeal and seek a stay pending appeal. However, that Rule also provides the court may "order otherwise," limiting the 14-day stay and potentially making the order effective immediately.

Notably, the trustee's Motion To Sell requests waiver of the 6004(h) stay. If the trustee's Motion To Sell is granted and waiver of the 14-day is also granted, statutory mootness would take effect immediately.

Time For Seeking
11 U.S.C. § 363(m) Determination

The time for seeking a 11 U.S.C. § 363(m) determination of good faith is not explicitly stated. However, "no bankruptcy judge is likely to approve a sale that does not appear to be in 'good faith,' an actual finding of 'good faith' is not an essential element for approval of a sale under § 363(b)." *Thomas v. Namba* (*in Re Thomas*), 287 B.R. 782, 785 (B.A.P. 9th Cir. 2002)

In the event of evidence discovered after the court authorizes sale or lease and makes a finding of good faith, an opposing party may file a motion pursuant to Federal Rule of Civil Procedure 60, as incorporated by Federal Rule of Bankruptcy Procedure 9024. In the event good faith first arises on appeal, it is appropriate to remand the matter for the limited purpose of determining whether good faith exists. *In re Thomas*, 287 B.R. 782, 785 (B.A.P. 9th Cir. 2002).

Determination of Good Faith

The proponent of the 11 U.S.C. § 363(m) determination has the burden of proof with respect to good faith. *In re M Cap. Corp.*, 290 B.R. 743, 747 (B.A.P. 9th Cir. 2003).

Though the Bankruptcy Code and Rules do not provide a definition of good faith, courts generally have followed traditional equitable principles in holding that a good faith purchaser is one who buys "in good faith" and "for value." *In re Ewell*, 958 F.2d 276, 281 (9th Cir. 1992). Typically, lack of good faith is shown by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Id.*

Grounds Stated in Motion and
Evidence in Support of Motion

In the Motion, the grounds stated for the court making the factual determination and legal conclusion that Buyers are good faith purchasers are:

A. "The Declarations of the Buyer, Mr. and Mrs. Beronio, reflect that the proposed sale between the Buyer and the Trustee represents an arm's length transaction bargained for in good faith and that the Buyer thus qualifies as a good faith purchaser." Motion, p. 2:26-28; Dckt. 430.

In substance, this portion of the grounds instructs the court to read other pleadings and assemble such grounds for the Trustee.

B. "The Buyer is not a creditor of the Debtor, nor does the Buyer intend to have a professional relationship with the Debtors. *Id*., p. 2:28-3:2.

There is a grounds stated, but then a curious addition about Buyers does not intend to have a "professional relationship with Debtors." This statement is pregnant with the potential that Buyers intend to have a personal or economic relationship with the Debtors. [Fn.1.]

FN. 1. The court notes that in the Declaration of Buyer, Dckt. 426, filed with the Motion to Approve Sale, some additional evidence is provided for grounds not clearly stated in this Motion now before the court (identified by the paragraph number in the Declaration):

> 6 . There has been no fraud or collusion between me, my spouse, and any other bidder or between me, my spouse, the Trustee or the Debtors.
>
> 7. Neither I nor my spouse intend to have any professional relationship with the Trustee or the Debtors. We do not anticipate their participation in any way in our use of the Subject Property. Nor have we extended any offer of employment or compensation to them.
>
> 8. We have not contemplated or promised transferring consideration to persons other than the Trustee in connection with the proposed sale.

This would be significant, positive grounds to be stated in a motion.

C. "There has been no fraud." *Id*., p. 3:2.

While affirmatively stating a factual and legal conclusion, there are not grounds stated upon which such conclusion would be based.

D. "Moreover, the Buyer and the Trustee did not engage in any collusive bidding tactics to artificially deflate the Subject Property's fair market value or dissuade other proposed bidders from submitting qualifying bids." *Id*., p. 3:2-4.

This does state grounds, but appears to be (unintentionally) limited. It only states that Buyer did not conclude with the Trustee. This statement appears to be pregnant with the possibility that Buyer did conclude with others to deflate the fair market value or dissuade other potential purchasers.

Grossly absent from the grounds is any statement as to how the Property was marketed, the offers received, and that there was a dynamic marketing process leading to Buyer. No testimony is provided by the Broker/Agent who has been actively marketing this Property.

The Motion is supported by the Declaration of Hank Spacone, which provides testimony that the trustee and Buyers have not engaged in any fraud or collusion, and that the proposed sale is made in good faith for a sale price approximating the Property's fair market value. Declaration, Dckt. 432. Additionally, the Property is to be sold at $1,600,000.00, when Debtors estimated its value at $1,100,000.00. Amended Schedule C, Dckt. 139.

The trustee also filed the Declarations of Janene Beronio and Robert Beronio in support of the Motion To Sell, which provide testimony as to the same. Dckts. 425, 426. Buyers state neither have ever had any professional relationship with Trustee or Debtors. *Id.* Also, Buyers do not anticipate Trustee or Debtors participation in any way with the use of Subject Property nor have they extended any offer of employment or compensation to them. *Id.*

Journey Through This Case

As one quickly learns from reviewing the Docket, this case has been one of many stumbles and fumbles by persons in this case. At least one of the debtors is convinced that there is a massive conspiracy against his family and him to steal assets. He is convinced that various county officials, court appointed representative, and state court judges are allied in the conspiracy. He has become convinced that a former attorney for Debtor (as has been asserted many other attorneys have) is part of such conspiracy and has actively worked to do Debtor wrong, as well as a successor attorney for Debtor in this case.

On its face, it appears that this property has been marketed "according to Hoyle" and is moving to sale consistent with the Bankruptcy Code. The Trustee obtained authorization to employ a licenses Real Estate Broker. Order, Dckt. 339. The employment was authorized in early August 2021, and now in February 2022, six months later, the Trustee is bring forward an offer to purchase the property. This is not a "rushed, liquidation sale" of the Property, but one that appears to be consistent with commercially reasonable marketing of the Property. But no declaration of the Realtor is provided.

In light of the non-bankruptcy litigation and bankruptcy pleadings filed by at least one of the debtors, it would not be unreasonable for the selling Trustee and the Buyers to seek a determination of good faith.

At the hearing, **xxxxxxx**

~~Upon review of the record, the trustee has presented evidence demonstrating that the sale of the Property to the Buyers was made in good faith for purposes of 11 U.S.C. § 363(m). Therefore, the Motion is granted.~~

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

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

~~The Motion to Abandon Property filed by Hank M. Spacone ("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 for Finding Buyer of Real Property is a Good Faith Purchaser is granted, and Robert Beronio and Janene Beronio (the "Buyers") purchase of the Property identified as 4390 Emerald Ridge Lane, Fairfield, California (the "Property") are good faith purchasers as provided in 11 U.S.C. § 343(m) to the court.~~

9. **20-23267-E-7** **SHON/JILL TREANOR** **MOTION TO ABANDON**
DNL-14 **Pro Se** **2-10-22 [421]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2022. 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 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, ----------.

The Motion to Abandon is granted.

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

The Motion filed by Hank M. Spacone ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as 2019 Keystone Outback Ultra-Lite Toy Hauler ("Property"). The Motion is conditioned upon the approval of DNL-13, the Trustee's Motion to Sell, and the close of escrow for that transaction. The estate is incurring storage costs for the Property and the Property is of inconsequential value to the estate with the successful sale of the homestead. The Declaration of Hank M. Spacone has been filed in support of the Motion and provides testimony that the value of the Property is $23,560.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court having

granted Trustee's Motion to Sell, DNL-13, the court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Hank M. Spacone ("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 the Property identified as 2019 Keystone Outback Ultra-Lite Toy Hauler is abandoned to Shon Jason Treanor and Jill Diana Treanor by this order, with no further act of the Chapter 7 Trustee required.

10. **17-21973-E-7 SSA-8** **10 thru 11**

JOSE/MARIA PIMENTEL
Michael Williams

MOTION FOR COMPENSATION FOR BOB BRAZEAL, BROKER(S)
2-7-22 [191]

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, parties requesting special notice, and Office of the United States Trustee on February 7, 2022. An Amended Notice of Hearing was served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2022. By the court's calculation, 24 and 22 days' notice was provided, respectively. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Irma Edmonds ("Applicant"), the Chapter 7 Trustee, makes a First and Final Request for the Allowance of Expenses in this case to broker Bob Brazeal ("Professional").

Fees are requested for the period July 26, 2017, through September 4, 2017. The order of the court approving employment of Applicant was entered on September 26, 2017. Dckt. 113. Applicant requests fees in the amount of $825.00.

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 researching the public record for three properties, reviewing comparable sales, establishing valuation and possible equity, and taking extensive photos of the properties. The Estate has $54,080.11 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 summarized by date below:

July 26, 2017: Professional researched the public record for three properties and reviewed visuals of each property. Professional also reviewed comparable sales and established valuation and possible equity for one of the properties.

August 4, 2017: Professional received a tour from Debtor for each of the three properties which includes a personal residence, a rental property, and Debtor's dairy business.

August 5, 2017: Professional updated comparable sales for one of the properties. Professional also reviewed comparable sales and established valuation and possible equity for two of the properties.

September 4, 2017: Professional visited one of the properties again to take extensive pictures of the property per Applicant's request.

Exhibit 1, Dckt. 195.

The fees requested are computed by Professional 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**
Bob Brazeal, Broker	7.5 hours	$110.00	$825.00
Total Fees for Period of Application			$825.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Professional effectively used appropriate rates for the services provided. First and Final Fees in the amount of $825.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Professional is allowed, and the Chapter 7 Trustee / Debtor in Possession / Plan Administrator under the confirmed plan] is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $825.00

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 Irma Edmonds ("Applicant"), the Chapter 7 Trustee, for broker Bob Brazeal ("Professional") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:
>
> Bob Brazeal, Professional employed by the Chapter 7 Trustee

Fees in the amount of $825.00

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

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

11. 17-21973-E-7 SSA-9 — JOSE/MARIA PIMENTEL — Michael Williams — MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S) — 2-7-22 [198]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period July 26, 2017, through January 10, 2022. The order of the court approving employment of Applicant was entered on August 8, 2017. Dckt. 73. Applicant requests fees in the amount of $29,610.00 and costs in the amount of $1,591.66.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's

authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include reviewing the case file, preparing requisite pleadings when necessary, consulted with real estate broker to evaluate real property, litigated adversary proceeding, reviewed proof of claims, and appeared in status conferences. The Estate has $54,080.11 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 15.4 hours in this category. Applicant communicated with the Trustee regarding the scope of the case, prepared paperwork in relation to Debtor's motion to sell real property, reviewed cow-sale contract, and discussed case with Debtor's counsel.

Asset Disposition: Applicant spent 18.3 hours in this category. Applicant reviewed schedules to see which assets can be abandoned, reviewed creditor's email regarding real estate valuation, communicated with Trustee regarding the case, reviewed tax issues, and reviewed correspondence in regards to the stay relief motion.

Business Operation: Applicant spent 20.8 hours in this category. Applicant inquired into issues related to debtor-in-possession operating in Chapter 11 such as employee, vendor, tenant issues and similar problems.

Case Administration: Applicant spent 7.6 hours in this category. Applicant reviewed emails, communicated with counsel, reviewed tentative rulings, and ongoing communications with CPA.

Claims Administration and Objection: Applicant spent 5.2 hours in this category. Applicant inquired into specific claims, communicated with Trustee about Debtor's facilities, communicated with Debtor's counsel about tax liens filed against Debtor, and explored Bank of Stockton's outstanding liens.

Fee/Employment Applications: Applicant spent 12.8 hours in this category. Applicant prepared employment and feed applications for self and others and prepared motions to establish interim procedures.

Litigation: Applicant spent 18.4 hours in this category. Applicant litigated *Edmonds v. John a.k.a. Joao Bettencourt*, Case No. 20-02181.

Relief from Stay Proceeding: Applicant spent 0.2 hours in this category. Applicant reviewed Relief from Stay motion filed against Debtors by Wells Fargo Bank for stay relief and turnover of 2013 Chevy Silverado Truck. Communicated with Chapter 7 Trustee.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven S. Altman, Attorney	98.70	$300.00	$29,610.00
Total Fees for Period of Application			$29,610.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,591.66 pursuant to this application. However, applicant fails to provide a comprehensive breakdown of expenses in their Motion and supporting documents. Applicant relies on the court to do associate level work and sift through sixty-five (65) pages of exhibits. The court had to examine each page of the exhibits to decipher the actual expenses incurred and the category the expenses fit into.

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 $29,610.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $1,591.66 are not approved pursuant to 11 U.S.C. § 330 and not authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$29,610.00
Costs and Expenses	$0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven S. Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $29,610.00
> Expenses in the amount of $0.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

12. **19-26574-E-7** **SEAN ALMEIDA** **MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANT(S)**
DNL-10 **Timothey Walsh** **2-7-22 [101]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2022. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

J. Michael Hopper ("Trustee") seeks to employ Bacheki, Crom & Co., LLP ("Accountant") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Accountant to analyze the Debtor's tax returns and prepare state and federal tax returns for the sale of the real property located at 22 Solano Drive, Dixon, California.

Trustee argues that Accountant's appointment and retention is necessary to analyze the Debtor's tax returns and prepare state and federal tax returns for the sale of the real property located at 22 Solano Drive, Dixon, California. The terms of employment consist of a flat fee agreement in the amount of $3,200.00. A flat fee agreement is in the best interests of the estate for the limited services that the Accountant will provide.

Jay D. Crom, a certified public accountant of Bacheki, Crom & Co., LLP, testifies that he will perform tax-related accounting as well as tax preparation in compliance with state and federal

authorities. Jay D. Crom testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Accountant, considering the declaration demonstrating that Accountant does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Bacheki, Crom & Co., LLP as Accountant for the Chapter 7 Estate on the terms and conditions set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 104. Approval of the flat fee agreement is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by J. Michael Hopper ("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 Employ is granted, and Trustee is authorized to employ Bacheki, Crom & Co., LLP as Accountant for Trustee on the terms and conditions as set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 104.
>
> **IT IS FURTHER ORDERED** that a set fee for compensation of $3,200.00 is authorized, subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of

whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

13. **22-20280-E-13 MMM-1** **ERNEST CRUZ** **Mohammad Mokarram** **MOTION TO EXTEND AUTOMATIC STAY** **2-10-22 [13]**

DUPLICATE FILING

The following matter appears to be a duplicate filing. The court will address this Motion filed as Docket No. 9.

14. **22-20280-E-13 MMM-1** **ERNEST CRUZ** **Mohammad Mokarram** **MOTION TO EXTEND AUTOMATIC STAY** **2-10-22 [9]**

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 13 Trustee, creditors, and Office of the United States Trustee on February 10, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 Extend the Automatic Stay is granted.

Ernest Fermen Cruz ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 2020-23058) was dismissed on

October 26, 2021, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 2020-23058, Dckt. 33, October 26, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he failed to make plan payments due to losing his job and not having social security at the time.

TRUSTEE'S NON-OPPOSITION

On February 22, 2022, David Cusick, Chapter 13 Trustee, filed a Non-Opposition to Debtor's Motion to Extend the Automatic Stay. Dckt. 21.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Extend the Automatic Stay filed by Ernest Ferman Cruz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.
>
> ~~**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including xx:xx x.m. on xxxx, 2022.~~

15. 21-24291-E-7 PLC-1 JIWAN KAUR Peter Cianchetta

MOTION TO AVOID LIEN OF BMO HARRIS BANK
2-2-22 [12]

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, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is xxxxx.

This Motion requests an order avoiding the judicial lien of BMO Harris Bank ("Creditor") against property of the debtor, Jiwan Kaur ("Debtor") commonly known as 5918 Meeks Way, Sacramento, California ("Property").

A judgment was entered against SSSP Trucking Inc., in favor of Creditor in the amount of $787,091.84. Exhibit 2, Dckt. 15. An abstract of judgment was recorded with Sacramento County on July 27, 2021, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $560,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $312,390.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $248,110.00 on Schedule C. Dckt. 1.

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

CREDITOR'S OPPOSITION

On February 17, 2022, BMO Harris Bank, Creditor, filed an Opposition to Debtor's Motion to Avoid Judicial Lien. Dckt. 21. The Opposition states the court should not adjudicate the Motion without holding an evidentiary hearing after an adequate opportunity for discovery. Creditor has serious questions on whether or not the Debtor is entitled to a homestead exemption on the Property. Creditor would like an evidentiary hearing to take place to determine:

(a) whether the Property is an investment property for use in Debtor's home health care business;

(b) whether Debtor actually resides in the Property; and

(c) if Debtor currently resides in the Property, and whether Debtor has resided in the Property for the period required to give rise to a homestead exemption.

Creditor requests the court to treat the Motion as a "long cause" matter; use the March 3, 2022, hearing date as a scheduling conference; establish deadlines for discovery and the presentation of evidence; and set a date for an evidentiary hearing.

CREDITOR'S SEPARATE STATEMENT

Creditor filed a Separate Statement along with their Opposition. Dckt. 22. The Statement provides for Creditor's arguments for their allegation that the real property of 5918 Meeks Way, Sacramento, California, is actually an investment property. Creditor points to Debtor's Declaration, Dckt. 14, that Debtor states the Property is her real property and has claimed an exemption. Further, Debtor is being served with pleadings at 2248 Coroval Drive, Sacramento, California. Additionally, the Deed of Trust for the Property, Debtor indicates her residence is the Coroval Property. Lastly, Debtor's boyfriend/partner, Sukhwinder Singh Kang, has advised Creditor on at least two occasions that Debtor acquired the Property for the purpose of running an in-home elder care business for friends and relatives.

~~**ISSUANCE OF A COURT-DRAFTED ORDER**~~

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

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

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

~~**IT IS ORDERED** that the judgment lien of BMO Harris Bank, California Superior Court for Sacramento County Case No. 34-2019-00263557-CU-BC-GDS, recorded on July 27, 2021, Document No. 202107270024, with the Sacramento County Recorder, against the real property commonly known as 5918 Meeks Way, Sacramento, California, is avoided in its entirety pursuant to 11~~

~~U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

~~The court shall issue a Pre-Evidential Hearing Scheduling Order setting the following dates and deadlines:~~

~~a. The Relief Sought is for the avoidance of a judgment lien as provided in 11 U.S.C. § 522(f). Jurisdiction for this Contested Matter exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K), (O).~~

~~b. Expert Witnesses shall be disclosed on or before xxxxxxx , 2022, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before xxxxxxx, 2022.~~

~~c. Discovery closes, including the hearing of all discovery motions, on xxxxxxx, 2022.~~

~~d. The Pre-Evidentiary Hearing Conference in this Adversary Proceeding shall be conducted at 2:00 p.m. on xxxxxxx , 2022.~~

FINAL RULINGS

16.	**17-26125-E-7 KJH-3**	**FIRST CAPITAL RETAIL, LLC Gabriel Liberman**	**MOTION FOR COMPENSATION FOR KIMBERLY J. HUSTED, CHAPTER 7 TRUSTEE(S) 1-18-22 [677]**

Final Ruling: No appearance at the March 10, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2022. 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 Trustee Fees is granted.

Kimberly Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of First Capital Retail, LLC ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 4, 2018, through January 18, 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 professional employed by a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

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

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

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

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include opening the case and entering it into the trustee's case management system, reviewing the petition and related schedules, reviewing financial documents, contracts, associated complaints including the SEC Complaint against Sunnet Singal and emails, reviewing the case with the trustee's attorney, Special Counsel, and CPA, prepared for and conducted the 341 examination, marketed the remnant assets and filed a report of the remnant sale, reviewed and filed taxes prepare by a CPA, handled monthly bank reconciliations and maintained proper accounting, prepare final accounting and maintained a proper bond. Moreover, the trustee utilized appropriate professionals and participated actively in the investigation, litigation, settlement negotiations and subsequent document preparation.

The Estate has $63,144.22 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 requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$744.28
5% of the next $950,000.00	$0.00
Calculated Total Compensation	**$1,994.28**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$6,407.21
Less Previously Paid	$0.00
Total First Final Fees Requested	$1,994.28

The fees are computed on the total sales generated $63,144.22 of net monies (exclusive of these requested fees and costs).

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 $1,994.28 are approved pursuant to 11 U.S.C. § 330, are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $63,144.22 of unencumbered monies to be administered. The Chapter 7 Trustee opened the case and entered it into the trustee's case management system, reviewed the petition and related schedules, reviewed financial documents, contracts, associated complaints including the SEC Complaint against Sunnet Singal and emails, reviewed the case with the trustee's attorney, Special Counsel, and CPA, prepared for and conducted the 341 examination, marketed the remnant assets and filed a report of the remnant sale, reviewed and filed taxes prepare by a CPA, handled monthly bank reconciliations and maintained proper accounting, prepared final accounting and maintained a proper bond. Moreover, the trustee utilized appropriate professionals and participated actively in the investigation, litigation, settlement negotiations and subsequent document preparation. Applicant's efforts have resulted in a realized gross of $63,144.22 recovered for the estate. Dckt. 679.

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

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

Fees	$1,994.28
Costs and Expenses	$98.69

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 Kimberly Husted, 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 Kimberly Husted is allowed the following fees and expenses as trustee of the Estate:
>
> Kimberly Husted, the Chapter 7 Trustee
>
> Fees in the amount of $1,994.28
> Expenses in the amount of $98.69,
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

17. **21-20225-E-7** **DONALD JOHNSON** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, CHAPTER 7 TRUSTEE(S)**
BLF-8 **Michael Hays** **1-24-22 [97]**

Final Ruling: No appearance at the March 10, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted .

Loris L. Bakken, 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 15, 2021, through March 3, 2022. The order of the court approving employment of Applicant was entered on April 23, 2021. Dckt. 31. Applicant requests fees in the amount of $16,870.00 and costs in the amount of $63.85.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include providing legal advice and rendering legal services to Trustee regarding general case administration; and providing strategies on how to handle property of the estate. Applicant also assisted Trustee in the objection to Debtor's claim of a homestead exemption; the investigation of the ownership and valuation of property of the estate; the employment of a realtor and investigation regarding the sale of the real property; and the employment of special litigation counsel. The court finds the services were beneficial to Client and the Estate and were reasonable.

The Estate has $0.00 of unencumbered monies to be administered as of the filing of the application. Applicant will reduce the amount of fees requested to one-third of the funds in the estate if Trustee only holds less than $45,000.00. Additionally, Applicant states they will not receive a compensation if this is a no asset case.

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 7.1 hours in this category. Applicant: prepared their fee agreement, employment application, and fee application; reviewed deadlines to object to exemptions and to file a complaint objecting to Debtor's discharge; prepared several joint ex parte motions and stipulation to extend deadlines; and prepared and appeared at Section 341 meetings of creditors. Applicant did not bill for any time in connection with this category.

Objection to Exemptions: Applicant spent 28.1 hours in this category. Applicant requested and reviewed documents provided by Debtor regarding real property; prepared and filed an objection to the exemptions; and appeared by telephone at the hearing and continued hearing on the objection.

Investigation of Ownership and Valuation of Property of the Estate: Applicant spent 3.4 hours in this category. Applicant reviewed documents provided by Debtor regarding property of the estate and questioned Debtor at the Section 341 meeting. Applicant prepared and filed a Request for

Special Notice in a separate probate case filed by Debtor. Applicant also reviewed the Schedule of Assets and Debts describing Debtor's interest in real property and other personal property.

Employment of Realtor and Investigation Regarding Sale of Real Property: Applicant spent 12.9 hours in this category. Applicant had several communications with potential realtors; prepared and filed the application to employ realtors; and had more communications with employed realtors and Trustee regarding the sale of the real property.

Employment of Special Litigation Counsel: Applicant spent 3.8 hours in this category. Applicant contacted Archer Systems, LLC, who is handling the bankruptcy coordination for the Fire Victims Trust in connection with Debtor's PG&E claims. Applicant prepared an application to employ special counsel and made several other relevant inquiries thereafter.

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	55.3 hours	$350.00	$19,355.00
Total Fees for Period of Application			$19,355.00

The court notes that Applicant is only requesting fees in the amount of $16,870.00 which reflects 48.2 hours of billed hours.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $63.85 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	N/A	$29.75
Copying	$0.10	$34.10
Total Costs Requested in Application		$63.85

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 $16,870.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $63.85 pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$16,870.00
Costs and Expenses	$63.85

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case, with Applicant to be paid no more than one-third of the monies which the Trustee has to disburse for the payment of unsecured administrative expenses and unsecured claims.

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 Nikki B. 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 is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $16,870.00
> Expenses in the amount of $63.85,

with the limitation that Applicant shall be paid no more than one-third of the monies which the Trustee has to disburse for the payment of unsecured administrative expenses and unsecured claims. as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

18.	**19-24134-E-7** **MPD-7**	**FELIX/DEBORAH KIARSIS** **Bruce Dwiggins**	**MOTION FOR COMPENSATION FOR MICHAEL P. DACQUISTO, TRUSTEES ATTORNEY(S)** **1-18-22 [86]**

Final Ruling: No appearance at the March 3, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2022. 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

The Motion for Allowance of Professional Fees is granted.

Michael P. Dacquisto, 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 September 12, 2019, through March 3, 2022. The order of the court approving employment of Applicant was entered on September 27, 2019. Dckt. 21. Applicant requests fees in the amount of $18,810.00 and costs in the amount of $0.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include: reviewing petition, schedules and amendments; obtaining court approval for various matters relating to Applicant's employment and the sale of estate property; investigation of a preferential transfer situation; locating special counsel in connection with the preferential transfer situation; and filing the present Motion for Compensation. The Estate has $62,600.00 of unencumbered monies to be administered as of the filing of the application, however, the Chapter 7 Trustee indicated that the auctioneer has already been paid $3,465.00. Dckt. 89 at 2:10. Thus, the Estate is currently left with $59,135.00 with payments that have yet to be made to the Chapter 7 Trustee, special counsel, and Applicant. See *id.* at 2:9-14. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 0.2 hours in this category. Applicant reviewed a motion by the Debtor to approve a refinance of their loan secured against their residence

Asset Disposition: Applicant spent 4.4 hours in this category. Applicant prepared a motion to approve sale of estate assets and an automobile.

Employment and Fee Applications: Applicant spent 11.8 hours in this category. Applicant prepared their application for employment, prepared the application for employment of an auctioneer as well as compensation for the auctioneer; and prepared the present Motion for Compensation.

Preferential Transfer Issues: Applicant spent 25.4 hours in this category. Applicant prepared and obtained two Rule 2004 orders, participated in informal settlement discussions, and assisted Client in locating special counsel to handle the matter.

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 P. Dacquisto	41.8 hours	$450.00	$18,810.00
Total Fees for Period of Application			$18,810.00

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 $18,810.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees $18,810.00

pursuant to this Application as final fees 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 Michael P. Dacquisto ("Applicant"), Attorney for Nikki B. 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 Michael P. Dacquisto is allowed the following fees and expenses as a professional of the Estate:
>
> Michael P. Dacquisto, Professional employed by the Chapter 7 Trustee

Fees in the amount of $18,810.00.

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

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