UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

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

1.	**21-90495-E-7** **SLC-001**	**LUZ DIAZ GOMEZ** **Pro Se**	**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS** **12-8-21 [17]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 10, 2021. By the court's calculation, 90 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice as to the relief requested to dismiss the case, and

Is granted for the extension of time to file motions to dismiss or objections to discharge pursuant to 11 U.S.C. § 707(b) or §727 is extended through and including April 15, 2022.

The Chapter 7 Trustee, Sheri L. Carello ("Trustee"), seeks dismissal of the case on the grounds that Luz Maria Diaz Gomez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 12:00 p.m. on February 15, 2022. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

JANUARY 3, 2022 COURT ORDER

On January 3, 2022, the court issued an on Trustee's Motion to Dismiss for failure to appear at § 341 Meeting of Creditors. Dckt. 20. The Order grants Trustee's Motion and the bankruptcy case is dismissed.

DEBTOR'S MOTION TO VACATE

Debtor filed a Motion to Vacate on January 14, 2022. Dckt. 29. Debtor states she did appear because she was sick.

JANUARY 20, 2022, COURT ORDER

On January 20, 2022, the court issued an Order on the matter. Dckt. 30. The Order states the order dismissing the above-captioned case entered on January 3, 2022, Dckt. 20, is hereby vacated. The Clerk of the Court will reset the § 341 Meeting of Creditors.

DISCUSSION

The Trustee reports that the Debtor appeared at the continued meeting on February 15, 2022 and at the further continued First Meeting on February 25, 2022. Trustee February 21 and February 25, 2022 Docket Entry Reports. The First Meeting has been further continued to March 14, 2022.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Sheri L. Carello ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as to the relief requested to dismiss the case.
>
> **IT IS FURTHER ORDERED** that the Motion is granted for the extension of time to file motions to dismiss or objections to discharge pursuant to 11 U.S.C. § 707(b) or §727 is extended through and including April 15, 2022.

2. 20-90107-E-7 PAUL DASILVA
WF-5 Tamie Cummins

MOTION FOR AUTHORITY TO ESTIMATE CLAIM OF THE INTERNAL REVENUE SERVICE CLAIM 3-2
1-26-22 [100]

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)(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 26, 2022. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. The court notes Debtor has new counsel. Tamie L. Cummins, from Borton Petrini, LLP effective February 14, 2022. Dckt. 105. Ms. Cummins has not been served. However, it appears Ms. Cummins is in the same firm as Debtor's prior counsel. Additionally, Ms. Cummins filed a Declaration on March 2, 2022 regarding this Motion. Therefore, the court accepts service as proper.

The Motion for Authority to Estimate Claim 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 Authority to Estimate Claim is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests an order estimating the Claim of the Internal Revenue Service ("IRS"), Claim 3-2, arising from Debtor's 2016 tax obligations. Dckt. 100. Trustee is prepared to close the bankruptcy case, however, Claim 3-2 has not yet been liquidated and need to be estimated for distribution purposes.

11 U.S.C. § 502(c) requires an estimation for any contingent or unliquidated claim if failure to do so would unduly delay the administration of a case. The essence of section 502(c) is to convert all claims against debtor into dollar amounts. 4 Collier on Bankruptcy P 502.04 (16th 2021). Section 502(c) is designed to permit estimating claims that might delay the closing of the estate. *In re Ford*, 967 F.2d 1047, 1053 (5th Cir. 1992). It avoids the need to await resolution of outside lawsuits and estimates the likely outcome of the actions. *Id.* Additionally, it allows the Trustee to "more rapidly determine the payout too each creditor who, in the meantime, receives no interest on its claim. *Id.*

Here, the IRS has an unliquidated claim because the claim asserts it is "estimated." Proof of Claim 3-2 at 4. This is due to the return not yet being filed. Therefore, the value has not yet been clearly established.

The IRS' estimate for the claim is $10,613.49. This is based on information available to the IRS. Trustee states their accountant, however, "has contacted Debtor's representatives, and has obtained a copy of a signed tax return for 2016" showing tax due of $500.00. Motion at 2:4-6, Dckt. 100. Trustee does not have evidence whether the return was actually filed. Trustee has not provided the signed tax return as evidence to the court.

Trustee requests the court estimates the claim at $10,613.49, established in IRS Proof of Claim 3-2. However, if Debtor can provide evidence that they have a liability of $500.00, Trustee requests the court estimate the claim at $500.00.

Debtor's Declaration

On March 2, 2022, Debtor filed a declaration (Dckt. 106) stating the following:

1. Debtor's original 2016 federal and state income tax returns were filed in October 2017.

2. Debtor's attorney called the IRS on February 17, 2021 (the court believes this may be a typographical error and Debtor's attorney actually called on February 17, 2022).

3. The IRS informed Debtor's attorney that the tax returns were received but rejected for unknown reasons and it would need to be re-processed which could take anywhere from 12-20 weeks to be reviewed.

4. On February 28, 2022, Debtor spoke with their accountant, Michael Bryan, and their attorney. That same day Debtor dropped off a hard copy of their 2016 Federal and State income taxes to their attorney's office.

5. Debtor is confident they only owe $500.00 to the IRS for the 2016 year.

Monique Pulido Declaration

Monique Pulido, paralegal at Ms. Cummin's law office, filed a declaration (Dckt. 107) on March 2, 2022 stating the following:

1 On February 17, 2022, Ms. Pulido spoke with IRS insolvency specialist, Diana Aguilar.

2 Ms. Aguilar stated they and their supervisor reviewed the 2016 tax returns and are unsure why they were rejected. Additionally, they were unable to locate any notes or codes to specify the reason for objection.

3 Ms. Aguilar stated Debtor's tax returns would need to be processed again which can take between 12-20 weeks.

Tamie Cummins Declaration

On March 2, 2022, Ms. Cummins, Debtor's counsel, filed a declaration (Dckt. 108) stating the following:

> On February 28, 2022, Ms. Cummins spoke with accountant Michael Bryan, who is Debtor's current accountant. After speaking with Mr. Bryan, Ms. Cummins is confident that Mr. DaSilva will only owe $500.00 for the 2016 tax year.

No exhibits have been filed to support the 2016 tax returns being resubmitted to the IRS.

Review of Applicable Law

Movant cites to 11 U.S.C. § 502(c) in support of the present request for the court to estimate a claim of the Internal Revenue Service. 11 U.S.C. § 502(c) provides:

> (c) There shall be estimated for purpose of allowance under this section—
>
> (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or
>
> (2) any right to payment arising from a right to an equitable remedy for breach of performance.

Movant states that the $10,613.49 stated by the Internal Revenue Service in Amended Proof of Claim 3-2 is "estimated" by the Internal Revenue Service, which the Movant Trustee has not been able to verify. The attachment states that the tax obligation for 2016 taxes is estimated by the Internal Revenue Service (not the Movant):

> 1 LIABILITY IS ESTIMATED BASED ON AVAILABLE INFORMATION BECAUSE THE RETURN HAS NOT BEEN FILED. THIS CLAIM MAY BE AMENDED AS NECESSARY AFTER THE DEBTOR FILES THE RETURN OR PROVIDES OTHER REQUIRED INFORMATION

Amd POC 3-2, p. 4.

Though Amended Proof of Claim 3-2 was filed on June 6, 2021, neither the Debtor nor the Movant has filed an objection to that Amended Claim.

Movant does not inform the court whether this is a surplus case, with the surplus money being disbursed to the Debtor, or a case in which there will be less than a 100% dividend to creditors holding general unsecured claims. From the information in the Motion and a review of the claims filed, it appears that this is a surplus case.

The Declarations provided by Debtor indicate that Debtor has provided the Internal Revenue Service with a "hard copy" of the 2016 return by mail on March 1, 2022 - which is nine months after the Amended Claim 3-2 was filed.

The Internal Revenue Service does not state that it has filed a substitute return for Debtor for 2016, but only that it has "estimated" what the Internal Revenue Service thinks the claim may be.

Evidentiary Value of Proof of Claim

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

No objection to Amended Proof of Claim 3-2 has been filed.

At the hearing, XXXXXXXXXX

The Motion pursuant to 11 U.S.C. § 502(c) is granted, and the priority claim of Internal Revenue Service ("Creditor") is estimated to be in the amount of $10,613.49 for purposes of distribution in this case. This is without prejudice to any final determination of the amount of Debtor's 2016 federal tax obligation.

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

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

The Motion for Authority to Estimate Claim 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 pursuant to 11 U.S.C. § 502(c) is granted, and the priority claim of Internal Revenue Service ("Creditor") is estimated to be in the amount of $10,613.49 for purposes of distribution in this case. This is without prejudice to any final determination of the amount of Debtor's 2016 federal tax obligation.

3.	**10-94523-E-7** **BLF-3**	**ROGER/MARY PITTO** **David Foyil**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **2-15-22 [61]**

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 15, 2022. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period August 10, 2021, through March 17, 2022. The order of the court approving employment of Applicant was entered on September 3, 2021. Dckt. 46. Applicant requests fees in the amount of $2,030.00 and costs in the amount of $107.63

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 strategies on how to handle property of the estate, along with assisting Trustee in the investigation of the estate's interest in a multi-district product liability lawsuit. If there are no funds in the estate or Mr. Farrar determines there are no assets to administer, Applicant will not receive compensation. Further, if Mr. Farrar is holding less than $6,000.00, and there are no more assets to be administered, Applicant will further reduce her compensation to one-third (1/3) of the funds in the estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.8 hours in this category, but is not billing for this time. Applicant prepared fee agreement, application, and employment application, and reviewed Trustee's deadline to file complaint objecting to debtor's discharge.

Investigation of Litigation and Employment of Special Litigation Counsel: Applicant spent 5.8 hours in this category. Applicant communicated with special counsel and discussed the status of the personal injury lawsuit and the impact it had on the bankruptcy case. Further, Applicant prepared and filed the application for Special Counsel's employment.

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, Attorney	5.8	$350.00	$2,030.00
Total Fees for Period of Application			$2,030.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $107.63 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$38.60
Postage		$69.03
Total Costs Requested in Application		$107.63

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,030.00 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 $107.63 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees $2,030.00
Costs and Expenses $107.63

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

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

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

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

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

Fees in the amount of $2,030.00
Expenses in the amount of $107.63,

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.

4. 22-90026-E-7 FRANK QUIROGA
Brian Haddix

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-15-22 [19]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on February 17, 2022. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $188.00 due on February 1, 2022.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $188.00.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

5. 18-90029-E-11 FWP-13 | **JEFFERY ARAMBEL** | **CONTINUED MOTION TO ABANDON**
Pro Se | **4-8-21 [1410]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Abandon is xxxxx.

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

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

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

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

November 16, 2021 Status Report

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

December 16, 2021 Hearing

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

March 10, 2022 Hearing

At the hearing xxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Abandon is xxxxx.

6. 18-90030-E-11 FWP-2

FILBIN LAND & CATTLE CO., INC.
Peter Fear

CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN
12-9-21 [522]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Order in Aid of Execution of the Plan is xxxxx.

Continuance of the February 17, 2022 hearing.

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

REVIEW OF MOTION

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

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

Reorganized Debtor's Opposition

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

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

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

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

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

Plan Administrator's Reply

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

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

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

C. The statements of Reorganized Debtor's former counsel, Mr. St. James. Reorganized Debtor's Counsel, Michael St. James, told Mr. Rios, Plan Administrator's Counsel, that it had elected to dissolve to realize certain tax benefits. Declaration of Jason E. Rios, Dckt. 525.

D. The reorganized Debtor's own conduct in turning over $500,389.95 in furtherance of the dissolution. In furtherance of dissolution, Reorganized Debtor transferred its remaining cash of $500,389.95 on March 15, 2021,

subject to Summit's senior rights and consent. Declaration of Juanita Schwartzkopf, Dckt. 524.

Applicable Law

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

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

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

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

plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;

(2) execution of documents extinguishing a lien that is released by the plan;

(3) an investor to advance committed funds necessary to consummate the plan;

(4) a change in corporate control or governance;

(5) distributions on claims as required by the plan;

(6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and

(7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

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

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

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

The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a

> comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

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

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

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

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

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

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

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

1. Judgment Divesting a Party of Title to Property;

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

3. Issue a Writ of Assistance; and

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

Review of Evidence Presented

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

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

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

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

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

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

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

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

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

In the Declaration of Jay Crom, he testifies that:

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

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

March 10, 2022 Hearing

At the hearing xxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Order in Aid of Execution of the Plan filed by Focus Management Group USA, Inc. ("Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Entry of Order in Aid of Execution of the Plan is xxxxx.

7.	**04-94131-E-7 FWP-20**	**UNIQUE HEALTHCARE MANAGEMENT, INC. David Johnston**	**CONTINUED MOTION TO APPROVE DISTRIBUTION AGREEMENT 12-29-21 [417]**

Items 7 thru 10

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, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on December 29, 2021. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

The Motion to Approve Distribution Agreement 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 Approve Distribution Agreement is xxxxx.

Unique Healthcare Management, Inc., ("Debtor"), by and through Jonathan E. Tesar, the duly appointed Chapter 7 trustee ("Trustee") (altogether "Movant") requests that the court approve a Distribution Agreement between Movant and Med-1 Medical Center, Professional Corporation dba MED-1 Medical Center, Inc. ("Med-1") and Carlson & Jayakumar A Partnership of Professional Law Corporations ("Carlson & Jayakumar"), counsel to Med-1, and for related relief (altogether "Settlor").

As noted in this court's Order granting the Omnibus Application to continue multiple contested matters, the trustee bringing this Motion in this Chapter 7 case is identified as a Chapter 11 Trustee. As discussed in the order, the Trustee was originally the Chapter 11 Trustee in this case, and then appointed as the Chapter 7 Trustee when the case was converted to one under Chapter 7.

Additionally, the Motion is brought by Unique Healthcare Management, Inc., the Debtor, with the Chapter 11/7 Trustee being the representative to bring this Motion for the corporation Debtor.

It appears that the present Motion has been brought in the name of a third party, but not by that party. No basis has been shown that the Chapter 7 Trustee can commence federal court proceedings for or in the name of the separate corporation Unique Healthcare Management, Inc., a separate and independent legal entity from the Chapter 7 Trustee and the Bankruptcy Estate.

Review of the Distribution Agreement

The Distribution Agreement is filed as Exhibit A, Dckt. 420. The Parties to the Distribution Agreement are:

A. Unique Healthcare Management, Inc., the Debtor, by the Chapter 7 Trustee

B. Jonathan Tesar, the Chapter 7 Trustee;

C. Carlson & Jayakumar, a Law Corporation, counsel for MED-1; and

D. MED-1 Medical Center, Professional Corporation, dba MED-1 Medical Center, Inc.

The Distribution Agreement is signed by Unique Healthcare Management, Inc. by its officer or representative by "Jonathan E. Tesar, the Chapter 7 Trustee." It does not state that Mr. Tesar is an officer of the corporation or authorized person to execute binding agreements for a corporation.

The California Secretary of State reports that Unique Healthcare Management, Inc. is an active corporation. The agent for service of process is identified as Wilmer D. Orifel. The latest filing with the Secretary of State lists the following Officers of the Corporation: Wilmer D. Origel (as CEO, Secretary, and CFO). The only Director of the Corporation is Wilmer D. Origel. [Fn .1.]

FN. 1. Https://businesssearch.sos.ca.gov/CBS/Detail

No basis has been shown that the Chapter 7 Trustee can enter into contracts for or in the name of the separate corporation Unique Healthcare Management, Inc., a separate and independent legal entity from the Chapter 7 Trustee and the Bankruptcy Estate.

REVIEW OF MOTION

The claims and disputes to be resolved by the proposed agreement are the priorities and amounts of the parties who claim an interest in Litigation Proceeds from certain Workers' Compensation Proceedings ("Litigation Proceedings"). The Distribution Agreement will allow creditors to receive a distribution on their claims from any Litigation Proceedings and allow Trustee to close the case.

Trustee believes the Distribution Agreement is in the best interest of the estate. First, it incentives Med-1 to litigate by providing them a ten (10) percent fee for performing distribution services an d(2) it

incentives owners of Med-1 to keep funding litigation because it caps liability at the amount of judgment when last renewed.

Trustee states this case has remained open for years due to large anticipated recovery from the Litigation Proceedings. Trustee has a judgment lien on the proceeds from litigation that could benefit Debtor's creditors. Declaration at ¶ 6, Dckt. 421.

Trustee provides the following time-line of proceedings in the adversary proceeding:

Judgment Against Med-1 and Judgment Lien

On or about April 3, 2007, the court entered a judgment in favor of Trustee in an adversary proceeding to recover amounts due in connection with a breach of a Rejection Agreement with Med-1. The Renewal of Judgment was entered on March 9, 2017.

Subordination Agreement

Carlson & Jayakumar has an attorney liens on any proceeds to be paid or received by Med-1 as a result of the Litigation Proceeds. In 2008, the court approved a subordination agreement, subordinating Debtor's judgment lien to the Attorney's. In 2014, the court approved an amended subordination agreement, establishing a waterfall for distribution of the gross proceeds of the Litigation Proceeds.

Trustee considered two alternatives for resolving this seventeen year old case. These alternatives include: (1) a motion to approve a sale of the Renewed Med-1 Judgment (low five figure range with no bids as of now) or (2) motion to approve the reservation of the Renewed Med-1 Judgment post-closing and to approve the Trustee filing a Trustee Final Report and closing the case. The second option would keep the case open indefinitely.

Workers' Compensation Proceedings

The Litigation Proceeds are the only asset that could produce significant return to usnecured creditors. This is why Trustee has kept the case open. However, Trustee asserts there does not appear a resolution to the Workers' Compensation Proceedings.

Movant and Settlor have entered a Distribution Agreement in anticipation of further delay with the Workers' Compensation Proceedings, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 420):

A. Upon the receipt of any Litigation Proceeds, Carlson & Jayakumar will serve a notice to the Debtor's creditors as set forth in Exhibit 1 to the Distribution Agreement;

B. The distribution of Litigation Proceeds are as follows:

1. Carlson & Jayakumar will first be reimbursed for its litigation costs;

2. Carlson & Jayakumar will receive 40% of the remaining Litigation Proceeds as its attorneys' fees;

3. Carlson & Jayakumar will make a distribution of 90% of the Litigation Proceeds Due to Debtor ($774,370.62);

4. Carlson & Jayakumar will make a pro rata (if insufficient funds to pay in full) distribution of the Litigation Proceeds Due to Debtor to the Chapter 7 Administrative Creditors as set forth in Exhibit 2 to the Distribution Agreement;

5. If any funds remain, Carlson & Jayakumar will make distributions (pro rata if insufficient funds) in the following order:

   a. Chapter 11 Administrative Creditors as set forth in Exhibit 3,

   b. Priority Creditors as set forth in Exhibit 4,

   c. General Unsecured Creditors as set forth in Exhibit 5,

   d. Creditors in iv-vii above (payment of interest on claims) as set forth in Exhibit 6,

   e. Shareholders of the Debtor as set forth in Exhibit 7;

6. If any distribution checks are returned or not cashed, Med-1 agrees to escheat such funds with the California Secretary of State pursuant to California law; and

7. Carlson & Jayakumar will retain 10% of the Litigation Proceeds Due to Debtor as an administrative fee in connection with the above-described distribution.

C. Any settlement of the Workers' Compensation Proceedings shall be paid to Carlson & Jayakumar and Carlson & Jayakumar will make all payments before they are made to Med-1.

D. Post-Judgment Interest is frozen at $251,739.29.

E. The bankruptcy case can be reopened to enforce the above terms.

Trustee is requesting the court enter an order:

1. Approving the Distribution Agreement;

2. Requiring Carlson & Jayakumar to provide periodic reports every six (6) months to creditors who hold claims and request such reports of the status of the Workers' Compensation Proceedings; and

3. Require all creditors to keep Carlson & Jayakumar informed of any changes of their addresses for purpose of participating in any distribution.

EX PARTE APPLICATION TO CONTINUE HEARINGS

On January 24, 2022, Debtor, Unique Healthcare Management, Inc., by and through Jonathan E. Tesar, Chapter 7 Trustee, filed an Ex Parte Application to Continue Hearings. Dckt. 435. The Application requests Docket Control No. FWP-20, FWP-22, and FWP-23 be continued from January 27, 2022, to March 10, 2022 at 10:30 a.m.

COURT ORDER

On January 25, 2022, the court issued an order stating the hearing on the Motion to Distribution Agreement is continued from January 27, 2022, to 10:30 a.m. on March 10, 2022. Dckt. 439. In the Order the court identified the apparent lack of legal ability fo a Chapter 7 Trustee to enter into contracts and commence federal court proceedings for or in the name of the legal entity Debtor corporation, which is separate and apart from the Trustee and the Bankruptcy Estate.

DISCUSSION

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

The Trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate. *In re Walsh Construction*, 669 F.2d at 1328. The reasonableness of a compromise is determined by the particular circumstances of each case. *Id.*

Here, grounds exist to approve the Distribution Agreement as it appears necessary to maximize Med‑1's incentive to pursue and fund the costs for the continuing litigation and trials incurred with the Workers' Compensation Proceedings. The court finds the terms agreed to by the parties reasonable and that the business judgment used by the Trustee is sound.

Additionally, Trustee's additional request of requiring Carlson & Jayakumar to provide periodic reports every six (6) months to creditors who hold claims and request such reports and requiring all creditors to keep Carlson & Jayakumar informed of any changes of their addresses for purpose of participating in any distribution is reasonable.

At the hearing, **XXXXXXX**

~~Based on the foregoing, the motion is granted.~~

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

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

~~The Motion to Distribution Agreement filed by Unique Healthcare Management, Inc., ("Debtor"), by and through Jonathan E. Tesar, the duly appointed Chapter 11 trustee ("Trustee") (altogether "Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion for Approval of Distribution Agreement between Movant and Carlson & Jayakumar A Partnership of Professional Law Corporations ("Carlson & Jayakumar"), counsel to Med-1 ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit (Dekt. 420).~~

~~**IT IS FURTHER ORDERED** that Carlson & Jayakumar are to provide periodic reports every six (6) months to creditors who hold claims and request such reports of the status of the Workers' Compensation Proceedings.~~

~~**IT IS FURTHER ORDERED** that all creditors are to keep Carlson & Jayakumar informed of any changes of their addresses for purpose of participating in any distribution~~

8. 04-94131-E-7 FWP-22 | **UNIQUE HEALTHCARE MANAGEMENT, INC.** **David Johnston** | **CONTINUED MOTION TO APPROVE CLAIMS AND ADDRESSES FOR DISTRIBUTION EXHIBITS** **12-29-21 [423]**

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, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on December 29, 2021. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

The Motion to Approve Claims and Addresses for Distribution Exhibits 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 Approve Claims and Addresses for Distribution Exhibits is denied.

The court is provided with an "interesting" request pursuant to 11 U.S.C. §§ 105, 726 and Federal Rules of Bankruptcy Procedure 3009. Unique Healthcare Management, Inc., ("Debtor"), by and through Jonathan E. Tesar, the Chapter 11 trustee ("Trustee"), requests the court enter an order "approving the claims and addresses set forth in Exhibits 1-7." Trustee is seeking a determination that the claims and addresses are true and correct.

The Motion continues and then provides "**Notice" to Creditors, stating "Creditors receiving this Motion should locate their names, addresses, and claims in one or more of the Exhibits to check for accuracy.**" Motion, p. 1:22-23; Dckt. 423 (double emphasis in original). It is unclear what these "grounds stated with particularity" in the Motion (Fed. R. Bankr. P. 9013) are and to what relief requested in the Motion they relate.

The Motion includes that:

> 10. The Trustee believes it is important to allow all creditors an opportunity to review the proposed Exhibits to determine if their claims and addresses are correct. By this Motion, the Trustee seeks an order approving the claims and addresses on Exhibits 1-7, which will be the exhibits attached to the Distribution Agreement. Tesar Decl. at ¶ 12.

Motion, ¶ 10; Dckt. 423. The Motion continues, stating:

> Here, the Trustee has compiled Exhibits setting forth all of the allowed claims in this bankruptcy case, which claims will participate in a future distribution under the Distribution Agreement (if any). It is important that creditors have an opportunity to review these Exhibits to determine if their claims and addresses are correct, especially in light of the passage of many years since the claims were filed and the fact that the Trustee intends to close this bankruptcy case. The Trustee has carefully reviewed all claims filed in this case and believes that the Exhibits accurately list the allowed claims in this case to be paid through a distribution. The Trustee seeks approval of Exhibits 1-7.

Id., p. 5:16-23.

The Motion appears to be a statement that the Trustee has reviewed the Proofs of Claims, determined that there are no further objections necessary, and that he wants creditors to know that he has done that and the addresses he is using to send out the disbursements (presumably the addresses on the Proofs of Claims).

In the Points and Authorities citation to statutory and case law authorities that state that only creditors who file proofs of claim may be paid.

The Trustee has provided Exhibits 1-7 listing Creditors, addresses, Chapter 7 Administrative "Claims" (Expenses), Chapter 11 Administrative "Claims" (Expenses), Priority Claims, General Unsecured Claims, Interest on Claims, and Shareholders. Dckt. 426.

EX PARTE APPLICATION TO CONTINUE HEARINGS

On January 24, 2022, Debtor, Unique Healthcare Management, Inc., by and through Jonathan E. Tesar, Chapter 7 Trustee, filed an Ex Parte Application to Continue Hearings. Dckt. 435. The Application requests Docket Control No. FWP-20, FWP-22, and FWP-23 be continued from January 27, 2022, to March 10, 2022 at 10:30 a.m.

COURT ORDER

On January 25, 2022, the court issued an order stating the hearing on the Motion to Approve Claims and Addresses is continued from January 27, 2022, to 10:30 a.m. on March 10, 2022. Dckt. 438.

DISCUSSION

11 U.S.C. § 726 is the general distribution section for liquidation cases. Section 726 lists the order of distribution of which claims will be paid in the distribution of a Chapter 7 case. Federal Rules of Bankruptcy Procedure 3009 provides when and how dividend checks are to be paid to creditors. U.S.C. § 105 gives the bankruptcy court power to do whatever is necessary or appropriate to carry out provisions of the administration of the bankruptcy case. Section 105 gives broad authority to the bankruptcy court to further another Bankruptcy Code section. 2 Collier on Bankruptcy P 105.01 (16th 2021).

The trustee is the representative of debtor's estate. 11 U.S.C. § 323(a). The trustee is "charged with the expeditious administration and liquidation of that estate and, where appropriate, the operation of the business of the estate." 3 Collier on Bankruptcy P 323.01 (16th 2021).

Proofs of Claim have been filed and the Trustee's duties include reviewing the Proofs of Claim and determining which, if any, should be the subject of a claim objection.

Movant has filed this Motion with the expectation that the court will perform an administrative action in finding the "claims and addresses" are true and correct. This request is highly administrative, giving Creditors a last minute opportunity to confirm that everything is correct prior to distribution.

Although 11 U.S.C. § 105 gives the bankruptcy court broad discretion to effectuate provisions of the administration of the bankruptcy case, Movant's request goes beyond the broad powers of the court.

The Trustee has done his job, has reviewed the Proofs of Claims and read the addresses on them. The Trustee has reviewed the Proof of Claim and does not object to the ones that remain.

The court does not have the ability to state what the addresses are and they are true and correct. Presumably, if the address is good, then the creditor received the notice of proposed distribution. If the address used by the Trustee is not a good address, then the Motion has not been served on the creditor and an order against someone who was not given notice is void.

At best, the court could enter an order stating in substance that the Trustee provided notice of the proposed distributions and addresses to be used, no one filed an opposition, and that the Trustee may proceed with the distributions in this case based on such list of creditors' addresses.

Movant's motion is denied.

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 Unique Healthcare Management, Inc., ("Debtor"), by and through Jonathan E. Tesar, the Chapter 11 trustee ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

9. **04-94131-E-7 FWP-23** | **UNIQUE HEALTHCARE MANAGEMENT, INC. David Johnston** | **CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF FELDERSTEIN FITZGERALD WILLOUGHBY PASCUZZI AND RIOS LLP FOR THOMAS A. WILLOUGHBY, TRUSTEES ATTORNEY(S) 12-30-21 [429]**

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, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on December 30, 2021. By the court's calculation, 70 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.

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the Attorney ("Applicant") for Jonathan E. Tesar, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. This was originally filed as a Chapter 11 case, with Applicant serving as the Chapter 11 Trustee's counsel. When the case was converted to Chapter 7 and the Chapter 11 Trustee was appointed as the Chapter 7 Trustee, Applicant continued in representation of the Chapter 7 Trustee.

Fees for representation of the Chapter 7 Trustee are requested for the period May 1, 2008, through December 7, 2021. The case was filed by the Debtor as a voluntary Chapter 11 case on November

9, 2024. It was converted to one under Chapter 7 on August 1, 2005. Ntc of Conv; Dckt. 215. The Order of the court approving employment of Applicant was entered on October 12, 2006. Dckt. 266.

The Motion seeks approval of the following fees:

A. Final Approval of Chapter 7 First Interim Fees Approved for the Period August 1, 2005 through April 30, 2008; Order, Dckt. 339.

1. Fees.....$90,313.00
2. Expenses.....$ 4,639.61

a. Total Chapter 7 First Interim Fees and Expenses.....$94,952.61

b. Order authorized payment of $50,000.00.

B. Final Approval of Chapter 7 Fees and Expenses for the Second Period of May 1, 2008 through December 7, 2021 in the amounts of:

1. Fees.....$99,851.50
2. Expenses.....$ 2,858.42

a. Total Second Period Fees and Expenses.....$101,709.92

C. Final Approval of Chapter 7 fees and Expenses from December 7, 2021 through the closing of the case in the amount of:

1. Fixed Fee.....$ 15,000.00

EX PARTE APPLICATION TO CONTINUE HEARINGS

On January 24, 2022, Debtor, Unique Healthcare Management, Inc., by and through Jonathan E. Tesar, Chapter 7 Trustee, filed an Ex Parte Application to Continue Hearings. Dckt. 435. The Application requests Docket Control No. FWP-20, FWP-22, and FWP-23 be continued from January 27, 2022, to March 10, 2022 at 10:30 a.m.

COURT ORDER

On January 25, 2022, the court issued an order stating the hearing on the Motion for Final Approval of Attorney's Fees and Costs is continued from January 27, 2022, to 10:30 a.m. on March 10, 2022. Dckt. 437.

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 e-mail and telephone conferences, legal research, drafting pleadings, and negotiating settlement terms.

The Chapter 7 Trustee does not provide a declaration in support of this Motion.

In the Motion, Applicant describes the financial affairs of the Bankruptcy Estate and the legal services provided as follows:

A. Counsel for the Trustee commenced nine adversary proceedings for the Trustee, that produced recoveries of approximately $60,000 and a substantial judgment against Med-1 Medical Center Professional Corporation dba MED-1 Medical Center, Inc. ("MED-1").

B. The judgment against MED-1 was in the amount of $522,631.33. A notice of lien for this judgment obligation in various state court workers compensation proceedings. This judgment has been renewed, with a new principal balance of $774,370.62 (which includes the prior accrued post-judgment interest).

The Trustee and Applicant obtained a subordination of the MED-1 claim in this case. This was to insure that recovery would be made for other creditors in this case, and included a subordination of MED-1's workers compensation attorney's lien.

Those workers compensation proceeding continue to grind on, now more than a decade later. There no anticipated recovery for MED-1 and the Bankruptcy Estate in the near future.

The Bankruptcy Estate has $49,000.00 of unencumbered monies to be administered as of the filing of the Application.

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.

Administrative Expense Motions: Applicant spent 0.10 hours in this category. Applicant obtained and forwarded administrative approval orders.

Adversary Proceedings No. 1: Applicant spent 0.20 hours in this category. Applicant filed an order dismissing the Johnston Law Firm adversary proceeding.

Analysis Strategy: Applicant spent 1.50 hours in this category. Applicant performed telephone conferences regarding status of litigation and multiple e-mail exchanges.

Asset Analysis: Applicant spent 97.70 hours in this category. Applicant participated in multiple e-mail exchanges regarding case status, settlement negotiations, preparing stipulations, drafting motions, and malpractice settlement. Additionally, Applicant researched and prepared memorandum for lien issues, drafted stipulations and motions, and prepared application for renewal of judgment.

Asset Disposition: Applicant spent 54.60 hours in this category. Applicant participated in multiple e-mail exchanges and telephone conferences regarding negotiations of Distribution Agreement. Drafted and revised Distribution agreement and prepared motion to approve Distribution Agreement. Multiple e-mail exchanges and telephone calls with remnant purchasers and others regarding potential sale of Med-1 Judgment.

CalPERS Case Administration: Applicant spent 0.60 hours in this category. Applicant drafted noticed of judgment lien for the Med-1 Judgment and filed with the Secretary of State's Office.

Claims Administration/Analysis: Applicant spent 75.90 hours in this category. Applicant participated in multiple e-mail exchanges and telephone calls regarding claim analysis, case status, and Worker's Compensation Proceedings. Additionally, Applicant reviewed proofs of claims, drafted motions and objections, and researched for distribution lists.

Compromise/Settlement: Applicant spent 11.50 hours in this category. Applicant participated in multiple e-mail exchanges and telephone calls regarding various settlements, reviewed documents, and drafted settlement documents.

General Case Administration: Applicant spent 5.00 hours in this category. Applicant performed updated UCC search, PACER research regarding minute orders filed, researched the status of *Origel v. Benedict* in State Court to see if the pleadings were available online, and telephone conferences with Trustee regarding status.

Miscellaneous Motions: Applicant spent 0.70 hours in this category. Applicant performed Secretary of State search on Med-1 Judgment and lien review.

Professional Fee/Employment Applications: Applicant spent 31.00 hours in this category. Applicant drafted motion to employ contingency fee counsel, drafted and filed First Interim Motion, drafted Second Interim Fee Motion, and reviewed 10-plus years of billing entries to transfer from old billing system to new billing system.

Reporting (including monthly, quarterly, other accounting reports): Applicant spent 7.10 hours in this category. Applicant participated in multiple e-mail exchanges and telephone calls regarding workers compensation action and OUST reporting and drafted final report - status report.

Tax Matters: Applicant spent 0.10 hours in this category. Applicant reviewed amended IRS claim.

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**
Thomas A. Willoughby, Partner	112.10	$469.49	$52,630.00
Joan S. Huh	2.00	$250.00	$500.00
Jennifer Niemann	0.80	$395.00	$316.00
Holly A. Estioko	114.90	$331.24	$38,060.00
Karen L. Widder, Legal Assistant	39.40	$171.31	$6,749.50
Susan Darms	16.80	$95.00	$1,596.00
Total Fees for Period of Application			$99,851.50

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

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$90,313.00	$50,000.00
Total Unpaid First Interim Fees Approved Pursuant to 11 U.S.C. § 331	$40,313.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,858.42 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $4,639.61.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Document Retrieval-PACER		$40.54

Telephone Conf./CourtCalls		$77.07
On-Line Research/Lexis		$341.67
Delivery Services/Cert. Of Service		$660.76
Postage		$259.07
Travel Expenses		$312.71
Photocopy Charges		$1,166.60
Total Costs Requested in Application		$2,858.42

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. The court gives:

(1) Final Approval of the prior authorized First Interim Approved Fees for the period August 1, 2005, through April 30, 2008, in the amount of $90,313.00, of which $50,000.00 has been paid as previously authorized by the court;

(2) Final Approval the Chapter 7 Fees for the Second Period of May 1, 2008 through December 7, 2021 in the amount of $99,851.50; and

(3) Final Approval of Chapter 7 Fees for the period December 7, 2021 through the closing of this Bankruptcy Case in the fixed fee amount of $15,000.00

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, after giving full credit for payments made to Applicant as previously authorized by the court.

Costs & Expenses

Second and Final Costs in the amount of $2,858.42 and prior Interim Costs in the amount of $4,639.61 are approved, for a total amount of $7,498.03, 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 finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The court gives:

(1) Final Approval for prior authorized Chapter 7 First Interim Approved Expenses for the period of August 1, 2005, through April 30, 2008, in the amount of $ 4,639.61;

(2) Final Approval the Chapter 7 Expenses for the Second Period of May 1, 2008 through December 7, 2021 in the amount of $2,858.42; and

(3) No Expenses for the period December 7, 2021 through the closing of this Bankruptcy Case, any such expenses being included in the fixed fee amount of $15,000.00 allowed above.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court 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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP ("Applicant"), Attorney for Jonathan E. Tesar, 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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, as attorney for the Chapter 7 Trustee, is allowed the following fees and expenses as a professional of the Estate:

(1) Final Approval of the prior authorized First Interim Approved Fees and Expenses for the period August 1, 2005, through April 30, 2008, in the respective amounts of $90,313.00 and $ 4,639.61, of which $50,000.00 has been paid as previously authorized by the court;

(2) Final Approval the Chapter 7 Fees and Expenses for the Second Period of May 1, 2008 through December 7, 2021 in the respective amounts of $99,851.50 and $2,858.42; and

(3) Final Approval of Chapter 7 Fees for the period December 7, 2021 through the closing of this Bankruptcy Case the fixed fee and expense amount of $15,000.00

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% 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.

10. 04-94131-E-7 FWP-25

UNIQUE HEALTHCARE MANAGEMENT, INC.
David Johnston

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CASERZA FAMILY TRUST
2-16-22 [455]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 16, 2022. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Jonathan E. Tesar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the Caserza Family Trust ("Settlor"). The claims and disputes to be resolved by the proposed settlement is allowing Settlor a Chapter 11 administrative expense claim in the amount of $15,000.00 pursuant to 11 U.S.C. § 503 without further order of the court.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Trustee's Declaration in support of the Motion, Dckt. 457):

A. Settlor shall be allowed a Chapter 11 administrative claim in the amount of $15,000.00 pursuant to 11 U.S.C. § 503 in full satisfaction of any and all claims against the Bankruptcy Estate, known and unknown.

No written agreement or other documentation of an agreement has been provided. In the Motion it is stated that Settlor is settling all claims, known and unknown, against the Bankruptcy Estate.

The Motion states that the bankruptcy trustee is one party to the Agreement and the "trust" (Settlor) is the other party to the Agreement. As one knows, a trust is not a separate legal entity for litigation or agreements, but it is the "trustee of the trust" which must be the real party in interest and party to the contract (in his/her/its capacity as the trustee).

The Administrative Expense at issue relates to Proof of Claim 47-1 filed in this case on September 23, 2005 for a "claim" in the amount of $46,996.44. Motion, ¶ 10; Dckt. 455. Though a proof of claim was filed, no motion for allowance of an administrative expenses was filed by Settlor. *Id*.

Proof of Claim 47-1 was filed by the Trustee of Settlor (the signature is illegible). The basis for the claim is a Judgment for Unlawful Detainer entered on July 11, 2005. POC 47-1, p. 2. It states that the mount of the rent due was $14,945.98, and that the damages for the unlawful detainer was $31,635.66. *Id*.

The Trustee's declaration is provided in support of this Motion. Dckt. 457. In addition to information in the Declaration that is based on the Trustee's personal knowledge, the Trustee further states, that his testimony includes and is based, "upon information supplied to me by people who report to me, upon information supplied to me by my professionals and consultants, upon review of relevant documents, ..." Dec., p. 1:20-22; Dckt. 457.

The Trustee's testimony is a bit curious in that he testifies, based on his personal knowledge, that "The Trust and I have agreed . . . ." *Id*., ¶ 13. He does not say, "John Jones, Trustee of the Trust, and I have agreed . . . ." It is questionable whether the Trustee has entered into an agreement, or has been told by someone who reports to someone, that they talked to someone and that there could be an agreement.

At the hearing, counsel for Trustee explained, **xxxxxxx**

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Settlor failed to timely file their motion for allowance of a Chapter 11 administrative claim. The Trustee is confident that the estate would prevail on any litigation regarding the allowance of a Chapter 11 administrative claim for the Settlor, the outcome of any litigation is uncertain. Further, the Trustee believes missing the Administrative Claims Bar Date, Settlor has a strong claim for a Chapter 11 administrative claim. Given the uncertainty of litigation over the issue, the Trustee believes that this factor favors settlement.

Difficulties in Collection

The Trustee believes that "collection" is not a factor, positive or negative, in this analysis as the Trustee is in a defensive position regarding Settlor's claim.

Expense, Inconvenience, and Delay of Continued Litigation

Any litigation of this issue will be expensive and will delay the Trustee's administration of the Bankruptcy Estate. This is particularly noteworthy given that the Trustee is beginning to move this Case towards closure. Additionally, if any litigation is appealed, additional delays and expenses will accrue, thus this factor favors settlement.

Paramount Interest of Creditors

The Settlement rids the Bankruptcy Estate of the risks of litigation, ongoing administrative expenses for legal fees, and delay of distributions to creditors. But for Settlor's failure to timely file a motion for allowance of a Chapter 11 administrative claim, it would be entitled to such a claim. It is in the paramount interest not only of the Settlor, but for all creditors to resolve this issue and allow the Trustee to avoid litigation and expenses and move this Case towards closure.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it eliminates the risk of further litigation, administrative expenses and delay of distributions to creditors. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Jonathan E. Tesar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Caserza Family Trust ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Trustee's Declaration in support of the Motion (Dckt. 457).

11. 21-90556-E-11 DCJ-2 | **INNOVATIVE BUILDING SYSTEMS, INC.** **David Johnston** | **MOTION TO EXTEND TIME** **2-22-22 [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 11 Trustee, creditors, and Office of the United States Trustee on February 22, 2022. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Extend Time was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 Time is granted.

Innovative Building Systems, Inc., Debtor/Debtor in Possession, is seeking to extend the time requirement for filing a Chapter 11 Reorganization Plan, pursuant to 11 U.S.C. § 1189(b). Debtor's order for relief was entered on the petition date November 25, 2021.

Debtor/Debtor in Possession seeks an extension to March 24, 2022, because Debtor/Debtor in Possession's attorney, David C. Johnston, fell ill with COVID-19 on February 7, 2022. Debtor/Debtor in Possession's attorney remained home in bed for fifteen (15) days despite receiving both doses of the initial vaccine, a booster, and a previous diagnosis with COVID-19 in September 2021. Additionally, Debtor/Debtor in Possession's attorney's secretary fell ill with COVID-19 and tragically passed. Debtor/Debtor in Possession's attorney has not found a suitable replacement for his secretary. Lastly, since February 7, 2022, Debtor/Debtor in Possession's attorney's office has been closed due to his diagnosis of COVID-19.

APPLICABLE LAW

United States Bankruptcy Code § 1189(b) states, "the debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable."

In *In re Online King*, the court denied the debtor's motion because the debtor failed to satisfy the stringent burden of demonstrating that it was entitled to extension. *In re Online King*, 629 B.R. 340 (E.D.N.Y. 2021). The court came to this conclusion because the debtor said "pandemic" in a generalized and conclusory fashion as a basis for an extension of time. *Id*. at 352. There is no mention in the Motion that anyone was taken ill, or unable to work due to COVID-19, or that offices were closed for certain periods of time, or that parties did not have access to their offices or their work material. *Id.*

DISCUSSION

Here, Debtor/Debtor in Possession has provided specific reasoning as to how the COVID-19 pandemic has affected the filing of a reorganization plan. Debtors order for relief was entered on the petition date November 25, 2021, the 90th day to file a plan of reorganization fell on February 23, 2022. Debtor/Debtor in Possession's attorney fell ill with COVID on February 7, 2022, sixteen (16) days before the deadline to file a plan. Debtor/Debtor in Possession's attorney ignored strict medical advice by leaving his home to file this motion. Further, Debtor/Debtor in Possession's attorney indicates his office has been closed due to him contracting COVID-19 and one of his employees has passed due to the virus. This evidence provides the court with a good enough basis that the delay of filing a reorganization plan was not due to Debtor/Debtor in Possession's actions.

Further, the extension Debtor/Debtor in Possession's requesting is not unreasonable, as it is merely seeking a thirty (30) day extension from when he filed this motion, February 22, 2022 to March 24, 2022.

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 Time filed by Innovative Building Systems, Inc., ("Debtor/Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Extend Time is granted, and Debtor/Debtor in Possession will file a reorganization plan on or before March 24, 2022.

12. 20-90159-E-7 BLF-4 | **BENJAMIN CHIPPONERI** Michael Benavides | **MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **2-17-22 [49]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 17, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, the Attorney ("Applicant") for Michael D. McGRanahan, 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 May 1, 2020, through March 10, 2022. The order of the court approving employment of Applicant was entered on June 22, 2020. Dckt. 27. Applicant requests fees in the amount of $3,810.00 and costs in the amount of $16.28.

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 strategies on how to handle property of the estate, along with assisting Trustee in a settlement and motion to compromise the controversy with Debtor and non-filing spouse. Applicant states if there are no funds in the estate or Mr. McGranahan determines there are no assets to administer, Applicant will not receive compensation. Further, if Mr. McGranahan is holding less than $12,000.00, and there are no more assets to be administered, Applicant will further reduce her compensation to one-third (1/3) of the funds in the estate. 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 4.7 hours in this category, but did not bill for any time in this category. Applicant prepared fee agreement, application, and employment application, and reviewed basis to object to Debtor's discharge.

Settlement with Debtor and Motion to Compromise: Applicant spent 18.3 hours in this category, but is not billing for 5.6 hours, bring the total to 12.7 hours. Applicant communicated with counsel for Debtor's children in their personal injury case, learned Debtor's spouse's claim would exceed $1 million, communicated with Debtor's counsel, and negotiated a settlement.

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, Attorney	12.7	$300.00	$3,810.00
Total Fees for Period of Application			$3,810.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $16.28 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$8.00
Postage		$8.28
Total Costs Requested in Application		$16.28

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,810.00 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.

Costs & Expenses

First and Final Costs in the amount of $16.28 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 $3,810.00
Costs and Expenses $16.28

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Michael D. McGranahan, 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 $3,810.00
Expenses in the amount of $16.28,

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.

13. 19-90464-E-7 RICHARD RICKS
BLF-8 Pro Se

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
2-15-22 [170]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2022. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, the Attorney ("Applicant") for Irma C. 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 6, 2020, through March 17, 2022. The order of the court approving employment of Applicant was entered on July 9, 2020. Dckt. 109. Applicant requests fees in the amount of $15,365.00 and costs in the amount of $110.54.

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 strategies on how to handle property of the estate, along with assisting Trustee in the investigation of Debtor's pre-petition transfer of his interest in a business to his wife. The Estate has $12,027.64 of unencumbered monies to be administered as of the filing of the application. Applicant states if there are no funds in the estate or Ms. Edmonds determines there are no assets to administer, Applicant will not receive compensation. Further, if Ms. Edmonds is holding less than $45,000.00, and there are no more assets to be administered, Applicant will further reduce her compensation to one-third (1/3) of the funds in the estate. 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 4.2 hours in this category, but did not bill for any time in this category. Applicant prepared fee agreement, application, and employment application, and collecting tax information.

Investigation of Pre-Petition Transfer and Employment of Special Counsel: Applicant spent 15.7 hours in this category, but is not billing for 4.7 hours, bringing the total to 11.0 hours. Applicant communicated with Creditor's counsel, requested and reviewed litigation documents and discovered Debtor may have transferred assets pre-petition. Applicant also prepared and filed employment application and fee application for Mr. Serlin to join as counsel to help uncover the transferred assets. Lastly, Applicant reviewed the documents from the Adversary Proceeding Complaint filed by Mr. Serlin.

Settlement and Motion to Compromise: Applicant spent 14.4 hours in this category, but is not billing for 3.4 hours, bring the total to 11.0 hours. Applicant reviewed proposed settlement from the Adversary Proceeding, prepared and filed the motion to approve the compromise and appeared telephonically at the hearing.

Motion to Pay Administrative Expenses: Applicant spent 5.2 hours in this category. Applicant prepared and filed a motion for court authorization to pay insurance premiums for an insurance policy on the Oklahoma property. Applicant reviewed pre-hearing disposition and appeared telephonically at the hearing.

Employment of Realtor and Sale of Real Property: Applicant spent 20.5 hours in this category, but is not billing for 3.8 hours, bringing the total to 16.7 hours. Applicant reviewed documents in relation to sale of property, made suggestions to Trustee regarding the sale, communicated with Trustee and Realtor, and appeared telephonically at the hearing for the motion to sell.

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, Attorney	43.9	$350.00	$15,365.00
Total Fees for Period of Application			$15,365.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $110.54 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$45.10
Postage		$52.94
Court Fees		$12.50
Total Costs Requested in Application		$110.54

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 $15,365.00 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 $110.54 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	$15,365.00
Costs and Expenses	$110.54

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Irma C. 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 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 $15,365.00
> Expenses in the amount of $110.54,
>
> 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.

14. 21-90267-E-7 BLF-3

CAROL TWEEDIE
Pro Se

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
2-16-22 [38]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 16, 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.

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

Fees are requested for the period August 10, 2021, through March 17, 2022. The order of the court approving employment of Applicant was entered on September 3, 2021. Dckt. 22. Applicant requests fees in the amount of $3,395.00 and costs in the amount of $47.54

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 strategies on how to handle property of the estate, along with assisting Trustee in the investigation of the estate's interest in a multi-district product liability lawsuit. If there are no funds in the estate or Mr. Farrar determines there are no assets to administer, Applicant will not receive compensation. Further, if Mr. Farrar is holding less than $10,000.00, and there are no more assets to be administered, Applicant will further reduce her compensation to one-third (1/3) of the funds in the estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.2 hours in this category, but is not billing for this time. Applicant prepared fee agreement, application, and employment application, and reviewed Trustee's deadline to file complaint objecting to debtor's discharge.

Investigation of Litigation and Employment of Special Litigation Counsel: Applicant spent 9.7 hours in this category. Applicant communicated with special counsel and discussed the status of the personal injury lawsuit and the impact it had on the bankruptcy case.

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, Attorney	9.7	$350.00	$3,395.00
Total Fees for Period of Application			$3,395.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $47.54 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$16.30
Postage		$31.24
Total Costs Requested in Application		$47.54

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,395.00 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 $47.54 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 $3,395.00
Costs and Expenses $47.54

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L Bakken ("Applicant"), Attorney for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having

been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Fees in the amount of $3,395.00
Expenses in the amount of $47.54,

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.