

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

March 11, 2021 at 10:30 a.m.

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| 1. <a href="#">19-90151</a> -E-11<br><a href="#">HSM-4</a> | Y&M RENTAL PROPERTY<br>MANAGEMENT, LLC<br>David Johnston | MOTION FOR ADMINISTRATIVE<br>EXPENSES O.S.T.<br>2-24-21 <a href="#">[145]</a> |
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**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).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice **Not** Provided. No Certificate of Service was filed with the court. Thus, the court is unable to determine if the proper parties have been served.

At the hearing **xxxxxxx**

The court set the hearing for March 1, 2021. Dckt. 149.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----

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| <b>The Motion for Allowance of Administrative Expenses is granted.</b> |
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March 11, 2021 at 10:30 a.m.

- Page 1 of 46 -

Chapter 11 Trustee, Irma C. Edmonds, (“Movant”) requests authorization for payment of administrative expenses in the aggregate amount of \$2,241.00 related to the Estate’s tax obligations for tax years 2019, 2020, and 2021 (“Tax Obligations”) to the California Franchise Tax Board (“FTB”) on behalf of Y&M Rental Property Management, LLC (“Debtor”).

| <b>Tax Year</b> | <b>Description</b>                     | <b>Amount</b>     |
|-----------------|--|-------------------|
| 2019            | California State Minimum Franchise Tax | \$841.00          |
| 2020            | California State Minimum Franchise Tax | \$800.00          |
| 2021            | California State Minimum Franchise Tax | \$800.00          |
|                 | <b>Total</b>                           | <b>\$2,241.00</b> |

## **DISCUSSION**

Section 503(b)(1)(B) of the Bankruptcy Code accords administrative expense status to “any tax...incurred by the estate...” Here, Movant requests allowance of, and authorization to pay from available funds, tax obligations to the Franchise Tax Board incurred by the Estate.

Movant having demonstrated that the expenses were necessary; the court finds that Movant providing for payment of the Estate’s Tax Obligations for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 11 Trustee is authorized to pay administrative expenses in the amount of \$2,241.00.

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

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

The Motion for Allowance of Administrative Expense filed by Chapter 11 Trustee, Irma C Edmonds (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the Chapter 11 Trustee is authorized to pay California Franchise Tax Board \$2,241.00 as an administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

**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).**

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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 in Possession, Debtor in Possession's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Agreement to Modify Automatic Stay 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, -----.

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| <p><b>The Motion for Approval of Agreement to Modify Automatic Stay is granted.</b></p> |
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Primo Farms, LLC, Debtor in Possession, ("Movant") requests that the court approve the agreement to modify the automatic stay. The claims to be resolved by the proposed agreement are the non-judicial foreclosure proceedings on three vacant lots in Santa Rosa, Sonoma County, California commonly known as 575 Jean Marie Drive, 623 Jean Marie Drive, and 370 Pacific Heights Drive (collectively, "Vacant Lots" or "Property"), subject to loans and encumbrances Debtor is unable to pay that exceed the current market value of the lots.

Movant and Settlor, Harmon Financial Corporation, on behalf of itself and as the loan servicer for various holders of fractional interests in the loans at issue ("Settlor" or "Lender") 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 Agreement filed as Exhibit G in support of the Motion, Dckt. 48):

- A. The parties agree that the automatic stay should be modified to immediately permit Lender to commence and complete non-judicial foreclosure proceedings on the Vacant Lots.
- B. In the event that Federal Rule of Bankruptcy Procedure 4001(a)(3) is applicable, the court may waive the 14 day stay provided therein.

## DISCUSSION

Here, Debtor and Settlor have agreed to modify the automatic stay so that Settlor may complete non-judicial foreclosures on property Debtor is unable to pay. The Motion to Approve the Agreement was filed and was set for hearing. A total of 21 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Agreement.

The Automatic Stay provides protection to the debtor, estate, and creditors, and may be relieved if it jeopardizes the interests of a creditor. Here, Debtor as Movant, and the interested Creditors as Settlers, agree that relief from the automatic stay is in the best interest of their respective parties. Moreover, Subchapter V Trustee has expressed non-opposition to modification of the stay for the benefit of this particular Settlor. Dckt. 51.

Movant and Settlor's Agreement to Modify Automatic Stay discusses the pertinent history and current state of affairs regarding the subject property. Exhibit G, Dckt. 48. Collectively, the current market value of the three Vacant Lots is estimated at \$900,000 in a "softening market," while the total encumbrances are estimated at \$1,168,114. *Id.* at ¶¶ 11-14. The loans on the Vacant Lots continue to accrue, on *each* lot, more than \$5,000.00 per month in loan interest, this is in addition to the HOA dues, assessments, fees, and real property taxes that continue to accrue on a monthly basis. *Id.* at 14. The Debtor in Possession lacks the financial ability to develop the Vacant Lots, and there is no benefit to the bankruptcy estate in retaining the Vacant Lots. *Id.* at ¶ 15; see also Movant's Decl. Dckt. 49 at ¶ 17. The proposed settlement allows Lender to proceed with immediate, non-judicial foreclosure proceedings. Dckt. 48 at ¶ A.

Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented an Agreement that allows Debtor to move on.

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 Approve Agreement to Modify the Automatic Stay filed by Primo Farms, LLC, Debtor in Possession, ("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 Agreement between Movant and Harmon Financial Corporation, on behalf of itself and as the loan servicer for various holders of fractional interests in the loans at issue (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Agreement filed as Exhibit G in support of the Motion (Dckt. 48).

**IT IS FURTHER ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 575 Jean Marie Drive, 623 Jean Marie Drive, and 370 Pacific Heights Drive, Santa Rosa, Sonoma County, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**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).**

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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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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| <p><b>The Motion for Authority to Use Cash Collateral is granted.</b></p> |
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Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral of SBN V AG I LLC ("Summit"), in accordance with the stipulation ("Stipulation") agreed to by Plan Administrator and Summit ("Parties") filed with the instant motion. Exhibit 1, Dckt. 1383. Plan Administrator requests the use of cash collateral to constitute the sole source of funds to operate the Reorganizing Debtor's business and pay Plan Expenses.

The Cash Collateral is identified as the cash distributions to be made to Summit pursuant to the confirmed plan in the related Chapter 11 case for the Filbin Land & Cattle Co, Inc. ("FLCC").

The Parties have reached a signed agreement for the use of cash collateral and the court summarizes the agreement as follows (the full terms of the agreement are set forth in the Stipulation and the Stipulated Budget filed as Exhibits 1 & A in support of the Motion, Dckt. 1383):

1. Certain limited property remains in the FLCC estate, certain real property in Westley, California, and the remaining cash of FLCC of approximately \$500,000.
2. Summit is the sole remaining creditor of the FLCC estate with an allowed claim and is entitled to exclusive recovery of the Westley, California property and the remaining cash of FLCC, both of which are available for distribution to Summit or, with Summit's consent, to the Reorganizing Debtor.
3. Summit consents to the Plan Administrator's use of the available distribution, pursuant to the Stipulation, as Other Cash Collateral, to fund the Plan Budget prepared by the Plan Administrator and approved or to be approved by the Oversight Committee filed as the Stipulated Budget. Exhibit A, Dckt. 1383.
4. The authorization granted to Plan Administrator for use of cash collateral to fund the Stipulated Budget shall immediately and automatically terminate on March 31, 2021; provided, however that such authorization may be extended without further hearing if agreed to by Summit in writing.
5. The Stipulation is subject to approval of the Bankruptcy Court.

#### **APPLICABLE LAW**

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

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

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

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

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

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

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

(b)(2) Hearing

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

## **DISCUSSION**

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for funding of the Plan Budget. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period March 11, 2021, through March 31, 2021; “provided, however that such authorization may be extended without further hearing is agreed to by Summit in writing” (Stipulation, Dckt. 1383 at ¶ 3). The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral from Summit is to be held in a cash collateral account and accounted for separately by Plan Administrator.

At the hearing, **XXXXXXX**

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this Ruling.



**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.

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

~~Sufficient Notice Provided.~~ The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

With respect to the parties for whom the free and clear sale is requested, **XXXXXX**

The Motion to Sell Property 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.

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| <b>The Motion to Sell Property is <b>XXXXX</b>.</b> |
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The Bankruptcy Code and Order of this Court (Dckt. 54) permits David M. Sousa, the Chapter 11 Subchapter V Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 5412 Kiernan Avenue, Salida, California ("Property").

The proposed purchaser of the Property is Northcastle LLC, and the summarized terms of the sale are (the full terms of the Purchase Agreement are set forth in Exhibit 2, Dckt. 75):

- A. The purchase price is \$1,600,000, consisting of a \$100,000 escrow deposit paid on January 26, 2021 and the balance of \$1,500,000 due on or prior to the sale closing date of March 14, 2021.
- B. Purchaser has waived any and all contingencies, and is purchasing the property as-is, where-is, and without any warranties.

- C. The Purchase Agreement requires that the property be transferred to Purchaser free and clear of all rights, claims, liens, leases, and interests.
- D. The broker commissions from the sale total \$88,000, 5.5% of the sale amount.
- E. The Seller and Purchaser will share equally in the closing costs and owner's title insurance.
- F. The Purchase Agreement states that Seller shall pay County transfer tax, City transfer tax, Dckt. 75, Exhibit 2, ¶ 7.D (1) & (2); however, the Purchase Addendum states that buyer shall pay any applicable County and City transfer tax fees.

### Overbidding Procedures

The Broker has received interest from other parties, and believes there could be at least one further interested party. Trustee submits that it is appropriate to hold an auction, open only to Qualified Bidders (Purchaser Northcastle already having been deemed a qualified bidder), at the sale hearing. Trustee proposes the following procedures:

1. To be a Qualified Bidder, a party must (1) notify the Broker in writing of their intent to bid by March 5, 2021 at a starting overbid of \$1.650 million; (2) provide a \$100,000 deposit and evidence of its financial ability to immediately consummate the transaction; and (3) agree to consummate the sale on the same or better terms as those found in the Purchase Agreement.
2. At the conclusion of the auction, the court will name the winning bidder. If the court approves the sale to the winning bidder, then the winning bidder's deposit becomes non-refundable.
3. If a Qualified Bidder does not become the purchaser of the Property, then the Trustee will return the Qualified Bidder's \$100,000 deposit within three (3) business days of the auction. Notwithstanding the forgoing, the Trustee shall not be obligated to return any portion of a non-refundable deposit of any winning bidder that fails to timely consummate the purchase.

### Qualified Overbidders

Movant filed a Further Statement in Support of Motion on March, 5, 2021. Dckt. 91. Movant identifies four (4) Qualified Bidders in accordance with the Bidding Procedures. The qualified bidders, and their opening bids, are as follows:

1. Northcastle: \$1,600,000.00
2. Ms. Bhupinder Kaur and Mr. Jasraj Bhatia: \$1,750,000.00
3. Asram Properties, LLC: \$1,850,000.00
4. Talwinderdeep Kahlon: \$1,900,000.00

According to Trustee, each of the bidders have proven that they are able to close the sale of the Property in cash, each has executed a purchase agreement, and each has deposited \$100,000 in escrow that is non-refundable to the extent they are the winning bidder. Trustee again states that the Property should be auctioned at an auction to be held in this court the day of the hearing, March 11, 2021, at 10:30 a.m.

### **Sale Free and Clear of Leases and Interests**

As an initial matter, the court addressed with counsel for the Trustee the leases and interests identified, and the service of the Motion.

With respect to the Memorandum of Agreement and the interest transferred to Marita Q. Barlahan-Biag and Henry Biag in 1996, service is stated to have been made on the two of them at 11200 Gold Express Dr., Ste D Gold River, California, which is stated to be the address for Marita Q. Barlahan-Biag on the California Medical Board license information page. It does not state how service was made on Henry Biag.

Additionally, other than referencing the Memorandum, no information is provided about the actual agreement and what interest, if any, was actually transferred to Marita Q. Barlahan-Biag and Henry Biag in 1996. Is it an easement? Is it a lien? No information is provided and the court is unsure of what that is and what provision of California law would provide for selling free and clear of such interest.

At the hearing, **counsel for the Trustee xxxxxx**

Then for the lease with Kiernan Village Assisted Living and MacCru, Inc., service is stated to have been accomplished as follows:

Debtor Charles Macawile, Jr. is stated to be identified as the CEO, CFO, Secretary, and Director of MacCru, Inc., with Exhibit 11 being a copy of the California Secretary of State's online website information from a December 22, 2020 filing. Dckt. 93.

The Trustee reports that a January 24, 2021 filing now states Evelyn Cruz, Debtor's wife, is shown as the MacCru's CEO, CFO, Secretary and Director. A copy of the January 25, 2021 Secretary of State online website information is provided as Exhibit 12; *Id.* The Debtor continues to be listed as an additional Director of MacCru on the last page of the January 24, 2021 Secretary of State information.

On both of the Secretary of State filing above, the Agent for Service of Process is identified as:

Bhupendra Patel  
34175 Valle Dr.  
Union City, California 94587

Exhibit 11, *Id.* at 133; and Exhibit 12, *Id.* at 136.

The Certificates of Service document service on the Debtor, but with respect to MacCru, it is asserted that since the Debtor was served, "as 8% owner of MacCru, MacCru has constructive notice of this Motion." No explanation is provided for such "constructive notice" complying with the service requirement of Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004, 9014, or how service on a shareholder is service on a corporation.

At the hearing, **counsel for the Trustee xxxxxxxx**

The Motion first seeks to sell the Property free and clear of the lien of Iron Oak Home Loans, Inc. (“Creditor”) and outstanding county real property taxes owed to the Stanislaus County Tax Collector. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant states that both liens on the property will be paid off completely with the proceeds from the sale. Thus, all liens with properly filed proofs of claim on the property will be extinguished.

#### Further Statement in Support of the Motion

##### *Memorandum of Agreement*

Trustee filed a Further Statement in Support of this Motion on March 5, 2021. Dckt. 91. Among other things Trustee informs the court of qualified bidders, a Memorandum of Agreement from 1996 and several actions taken by Debtor that have brought to questions Debtor’s good faith in prosecuting this case. Each are addressed below.

Trustee informs the court that a preliminary report pulled by the Property Broker uncovered a *Memorandum of Agreement* that appears to have been recorded against the Property on September 3, 1996. Trustee’s Statement, Dckt. 91 at 4:6; Exhibit 6, Dckt. 93. The sum total of the Agreement disclosed is stated as:

On the 22 day of August, 1996, CHARLES MACAWILE and AURORA MACAWILE entered into an agreement with HENRY C. BIAG and MARITA Q. BARLAHAN-BIAG, WHICH AFFECTS TITLE TO THAT CERTAIN REAL

PROPERTY KNOWN AS 5412 Kiaman Avenue, Salida, Stanislaus County, California, which is also described as follows:

North 150 feet of Lot 5 of Kewin Colony, according to the official map thereof filed in the office of the County Recorder for Stanislaus County on June 19, 1909 in Vol 14 of Maps at page 27, excepting therefrom the east 88 feet; also excepting therefrom the south 58 feet of the west 125 thereof.

Assessor's Parcel Number: 12-14-16-003

*Id.*

The Trustee served Henry C. Biag and Marita Q. Barlahan-Biag, parties to the Memorandum, copies of the Motion and all corresponding pleadings on February 2, 2021, at 11200 Gold Express Dr., Ste. D, Gold River, CA 95670, which is the address that appears for Marita Q. Barlahan-Biag on the Medical Board of California's on-line licensing search. Dckt. 91 at 4:13; *see* Dckt. 34.

The Biags are not listed in Debtor's Schedules. Trustee emailed Debtor's counsel on February 2, 2021, requesting information but no response was received. *Id.* at 4:12; Exhibit 7, Dckt. 93. By the time of hearing of this Motion, the Biags, having been served at Ms. Biag's business location, will have had 37 days' notice to respond, no response has been filed by the Biags.

*Debtor's Acts Against the Sale*

Trustee further informs the court of Debtor's 11<sup>th</sup> hour presentation of a purported lease of the Property and argues that because there exists a *bona fide* dispute regarding the purported leases, at a minimum, the sale may proceed free and clear of the leases under 11 U.S.C. § 363(f)(4). Dckt. 91. The following is the court's summary of Trustee's statement regarding actions by the Debtor and Debtor's wife, Evelyn Cruz ("Cruz").

Trustee asserts that Debtor and Cruz have attempted to obstruct the sale of this Property since Debtor's first bankruptcy filing in early 2020. The court removed Debtor from possession of the Property on November 22, 2020 due to Debtor's failure to sell the property, despite claims of a \$2 million offer for the property. *See* Dckt. 54. On March 1, 2021, ten days prior to the hearing on the instant motion, Debtor and Cruz again attempted to obstruct the sale by presenting two purported leases to Trustee in order to curb bidding. Trustee alleging that these tactics have caused Trustee, Broker, and Trustee's counsel to expend significant time and expense.

The first purported lease, between Change Enterprises Inc. and Kiernan Village Assisted Living, is dated February 16, 2016 and expires on its own terms on February 20, 2021 (the "2016 Lease"). Exhibit 9, Dckt. 93. The second lease, a Triple Net Lease between Debtor and MacCru, Inc., is dated November 1, 2019 (the "2019 Lease"), claims to be a 5 year lease, and would have been entered into in violation of the 2016 Lease, because the 2016 Lease would have still been active at the time. Exhibit 10. Dckt. 93.

As of December 22, 2020, a search of California Secretary of State for MacCru, Inc. listed Debtor as MacCru's CEO, CFO, Secretary, and Director. Exhibit 11, Dckt. 93. A second search on January 25, 2021 listed Cruz as MacCru's CEO, CFO, Secretary, and Director, with Debtor not listed at all. Exhibit 12,

Dckt. 93. (The court has reviewed Exhibit 12 and found that on the last page Mr. Macawille is listed as an additional director.)

Trustee noting that neither lease has ever been disclosed by the Debtor. The Debtor filed a Chapter 13 case on February 19, 2020. Case No. 20-90319. At which time the 2016 Lease would have been in effect, and the 2019 Lease was executed 4 months earlier. Neither was listed in Schedule G. *Id.* at Dckt. 12. Debtor lists an 8% interest in MacCru valued at \$200.00. *Id.* Debtor's Chapter 13 plan also does not list either lease. *Id.* at Dckt. 14.

The Schedules in the instant case are no different. *See* Dckt. 16. Trustee argues that the 2019 lease is a fabricated attempt by the Debtor and Cruz to defraud this court and taint a sale which will pay his creditors in full, some with interest. Adding that if the 2019 lease were real, Debtor would have informed the court that he was not in possession of the Property.

Trustee argues that even if the facts stated above were not present, there is a *bona fide* dispute as to the lease that allows the sale to proceed under 11 U.S.C. § 363(f)(4). Trustee contends that the leases fail for lack of consideration as the 2019 Lease is unclear on the amount of rent for the first year; and the Debtor is not in possession of the property and it appears that MacCru has never been in possession of the Property.

Trustee further argues that even if the leases are not "completely made up attempts at the eleventh hour by the Debtor and his wife to delay payment to his creditors," the sale free and clear of the leases may still be approved under this court's Local Rules and Ninth Circuit authority.

First, neither Debtor, nor MacCru has filed timely opposition to the sale, which requests sale free and clear of "all leases." Local Rule 9014(-1(f)(1)(B) requires opposition to a motion "shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing," and "[w]ithout good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not be timely filed." Debtor had notice; he was served with this Motion, and as 8% owner of MacCru, MacCru has constructive notice of this Motion. Certificate of Service, Dckt. 79.

Second, Trustee points the court to the Ninth Circuit, where the court has held that 11 U.S.C. § 363(f)(1) allows sales free and clear of unexpired real property leases. *See Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017). In *Spanish Peaks* the Ninth Circuit states:

Second, we emphasize that section 363(f) authorizes free-and-clear sales only in certain circumstances. The bankruptcy court did not specify which circumstance justified the sale in this case, stating only that Pinnacle and Opticom "d[id] not dispute that at least one provision of § 363(f) was satisfied." We, on the other hand, focus on 11 U.S.C. § 363(f)(1), which authorizes a sale if "applicable nonbankruptcy law permits sale of such property free and clear of such interest." 11 U.S.C. § 363(f)(1).

Under Montana law, a foreclosure sale to satisfy a mortgage terminates a subsequent lease on the mortgaged property. *See Ruby Valley Nat'l Bank v. Wells Fargo Delaware Trust Co.*, 2014 MT 16, 373 Mont. 374, 317 P.3d 174, 178 (Mont. 2014);

*Williard v. Campbell*, 91 Mont. 493, 11 P.2d 782, 787 (Mont. 1932). SPH's bankruptcy proceeded, practically speaking, like a foreclosure sale—hardly surprising since its largest creditor was the holder of the note and mortgage on the property. Indeed, had SPH not declared bankruptcy, we can confidently say that there would have been an actual foreclosure sale. Such a sale would have terminated the Pinnacle and Opticom leases. Section 363(f)(1) does not require an actual or anticipated foreclosure sale. It is satisfied if such a sale would be legally permissible.

*Pinnacle Rest. at Big Sky, LLC v. CHSP Acquisitions (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892, 900 (9th Cir. 2017). There can be no dispute that under California law a foreclosure by a senior lien (whether mortgage, deed of trust, or other) will result in the purchase acquiring the property free and clear of the junior lease, lien, or interest. See *Zieve. Brodnax & Steele, LLP v. Dhindsa*, 49 Cal. App. 5th 27, 36, (2020); *Homestead Sav. v. Darmiento*, 230 Cal. App. 3d 424, 437 (1991); *Goldstein v. Ray*, 118 Cal. App. 3d 571 (1981); *Hohn v. Riverside County Flood Control & Water Conservation Dist.*, 228 Cal. App. 2d 605, 612-613 (1964); and *Bracey v. Gray*, 49 Cal. App. 2d 274, 277-278 (1942).

The Trustee points this court to *In re Scimeca Foundation, Inc.*, where the bankruptcy court held that even where a sale of real property could trigger protections under 11 U.S.C. § 365(h)(1)(A)(ii), “[w]here [] the validity of the leasehold interests themselves are very doubtful [] any protections under section 365(h)(1)(A)(ii) that are generally afforded lessees of unexpired leases upon lease rejection are inapplicable.” *In re Scimeca Foundation, Inc.*, 497 B.R. 753, 787-788 (Bankr. E.D. PA 2013). The *Scimeca* court viewed several facts as leaning towards its conclusion, including: (1) “the purported lessees may not have paid any or all rent due;” (2) “none of the purported leases were ever disclosed by the debtor on its bankruptcy schedules...;” and (3) “these purported leases are in favor of the lessor’s principal and an affiliated entity.” *Id.*

Here, “no rent has been paid under either purported lease.” Trustee’s Statement, Dckt. 91 at 9:1. “MacCru has never occupied the Property in the nearly year and a half since the date of the 2019 Lease. *Id.* at 9:5. The leases have never been disclosed by Debtor. *Id.* at 9:6. Debtor has disclosed an 8% interest in MacCru, and is thus an insider benefitting from the transaction. *Id.* at 9:14.

Movant has stated grounds pursuant to 11 U.S.C. § 363(f)(4) showing that each of the leases identified above is in *bona fide* dispute, providing a basis for a sale free and clear, with the liens, encumbrances, and interests attaching to the sale proceeds to the same extent, validity, and priority as they existed in the Property sold pursuant to order of the court.

As a separate and independent grounds, as held by the Ninth Circuit Court of Appeals in *In re Spanish Peaks Holdings II, LLC*, the Movant has also establish that the property may be sold free and clear of such leases pursuant to 11 U.S.C. § 363(f)(1) - California law permitting the sale of such property free and clear of junior lease interests.

## DISCUSSION

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

For this Motion, Movant has established first that proceeds of the sale will be sufficient to satisfy the existing liens of secured creditors holding interest in the Property. As to any the purported leases, this court will subsequently determine whether such leases existed, the interests of such leases, and what portion of the proceeds of the sale, if any, relates to such leases.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Buyer's offered purchase price for the Property is sufficient to pay all known liens and encumbrances on the Property, as well as the closing and escrow costs that the estate is responsible for under the Purchase Agreement.

Movant has estimated that a 5.5% percent broker's commission from the sale of the Property will equal approximately \$88,000.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5.5% percent commission.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Northcastle has informed Trustee that time is of the essence in closing the sale due to Northcastle's intended use of the Property. Because only real property taxes, normal closing costs, and broker's commissions are to be paid from the sale proceeds, with all other rights, claims, interest, and leases attaching to the net proceeds, to be held in a blocked account pending further order of the court, no party-in-interest is prejudiced by waiver of the 14 day stay. Waiver benefits the estate by ensuring the receipt of \$1.6 million in cash just days after the hearing.

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

Counsel for the Trustee shall prepare and lodge with the court a proposed order consistent with the Ruling above and following the general format below:

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

The Motion to Sell Property filed by David M. Sousa, the Chapter 11 Subchapter V 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 David M. Sousa, the Chapter 11 Subchapter V Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(f)(1) and (4), as separate and independent grounds, to Northcastle LLC or nominee ("Buyer"), the Property commonly known as 5412 Kiernan Avenue, Salida, California ("Property"), on the following terms:



- A. The Property shall be sold to Buyer for \$1,600,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 2, Dckt. 75, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. ~~The Property is sold free and clear pursuant to 11 U.S.C. § 363(f)(1) and § 363(f)(4), as separate and independent grounds, of the following leases, to the extent that any such leases exist:~~

---

1. ~~The possible lease identified as the 2016 Lease between Change Enterprises Inc. and Kiernan Village Assisted Living, with whatever lease interest damages attaching to the net proceeds of the sale received by the Chapter 11 Subchapter V Trustee after payment of all costs, expenses, liens, and administrative expenses provided above or relating to the sale; pending further order of the court.~~

---

2. ~~The possible lease identified as the 2019 Lease between Triple Net Lease between Debtor and MacCru, Inc., with whatever lease interest damages attaching to the net proceeds of the sale received by the Chapter 11 Subchapter V Trustee after payment of all costs, expenses, liens, and administrative expenses provided above or relating to the sale; pending further order of the court.~~

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3. ~~The Property is sold free and clear of the interest identified in the *Memorandum of Agreement* dated September 3, 1996, with whatever interest damages attaching to the net proceeds of the sale received by the Chapter 11 Subchapter V Trustee after payment of all costs, expenses, liens, and administrative expenses provided above or relating to the sale; pending further order of the court.~~

- F. The Chapter 11 Subchapter V Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- G. The Chapter 11 Subchapter V Trustee is authorized to pay a real estate broker's commission in an amount not more than 5.5 percent of the actual purchase price upon consummation of the sale. The 5.5 percent commission shall be paid to broker, Jeremy Williams of Corcoran Commercial.

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

5. [20-90435](#)-E-11  
[RDW](#)-1

**CHARLES MACAWILE**  
**David Johnston**

**CONTINUED MOTION TO DISMISS  
CASE AND/OR MOTION TO CONVERT  
CASE FROM CHAPTER 11 TO CHAPTER  
7  
11-18-20 [48]**

**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.

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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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case and/or Motion to Convert 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.

|   |
|---|
| <b>The Motion to Dismiss Case and/or Motion to Convert is <span style="color: red;">XXXXX</span>.</b> |
|---|

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Charles Collantes Macawile, Jr. ("Debtor") has been filed by creditors Scott R. Williams and Anastasie C. Martin, Trustees of The Williams Trust Dated August 19, 2014, its successors and/or assignees ("Movant"). Movant is the current payee of a Promissory Note dated September 6, 2018 in the principal amount of \$1,000,000.00 secured by a First Deed of Trust, executed and recorded in Stanislaus County and which encumbers the real property located at 5412 Kieman Avenue, Salida, California 95368 ("Property"). The total amount of Movant's claim as of the Petition Date is \$1,190,684.75.

Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. This is Debtor's second pending bankruptcy case in the last eight (8) months.
- B. In the previous case (Case No. 20-90139), filed as a Chapter 13 case, Debtor proposed paying off the loan via a refinance in nine (9) months. Movant objected to this treatment and the objection was sustained.
- C. Six days after the previous case was dismissed, Debtor filed the instant case under Chapter 11 as a Small Business Subchapter V.
- D. Pursuant to Schedule I, neither the Debtor nor his non-filing spouse earn any income. Additionally, according to Schedule J, Debtor is running a deficit of \$2,267 each month.
- E. Debtor has again proposed to refinance to pay off Movant and in the Status Report filed on July 23, 2020, Debtor asserts having obtained a loan commitment from a lender in Mexico and is negotiating an agreement to lease the Property. Moreover, Debtor received an \$1.8 Million offer to purchase the subject Property but turned it down.
- F. At the meeting of creditors, Debtor testified that he intended to sell the Property to his wife, who qualified for a loan in April 2020 and was waiting for the finance to come through.
- G. Debtor has not filed a plan and his motion to extend the deadline to file a plan was denied.
- H. At the October 1, 2020 status conference, Debtor's Counsel informed the court that Debtor's plans of financing had not materialized.
- I. Debtor has not provided evidence that there is a reasonable likelihood that a plan will be confirmed within a reasonable time.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[:]; [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

## **DISCUSSION**

Creditor's concerns are well taken. Debtor has failed to confirm a plan. Additionally, the Debtor has no income and is acting to the detriment of creditors by, namely, having turned down an offer to sell the Property which would have allowed for his creditors to be paid.

The instant motion was filed prior to the November 18, 2020 Status Conference. At the status conference, the court addressed the same concerns Movant raises now. After reviewing the facts of the case, it was determined that Debtor in Possession be removed and Subchapter V Trustee will now market and sell the property. Civil Minutes, Dckt. 53.

The hearing has been continued at the request of Movant.

### **February 11, 2021 Hearing**

Since the last hearing, the Subchapter V Trustee has filed a Motion to Employ a Real Estate Broker (RAC-1) and a Motion to Employ Counsel for the Subchapter V Trustee (RAC-2) on January 22, 2020. Dckts. 66, 61. Both motions were granted and the Orders were entered on January 25, 2021. See Dckts. 71, 72.

The Subchapter V also filed a Motion to Sell real property free and clear of liens (RAC-3) on January 29, 2021 and set for hearing at 10:30 a.m. on March 11, 2021. Dckt. 73.

### **March 11, 2021 Hearing**

The Motion to Sell filed by the Subchapter V was **granted / denied**.

At the hearing **xxxxxxx**

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Chapter 11 Trustee, Debtor, Debtor's Attorney, and Creditors as stated on the Certificate of Service on February 4, 2021. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Trustee's failure to pay the required fees in this case: \$188.00 due on January 29, 2021.

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

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

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

## FINAL RULINGS

7. [19-91122-E-7](#)  
[BLF-5](#)

MARIBEL SOTO RIVERA  
Brian Haddix

MOTION FOR COMPENSATION FOR  
LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
1-21-21 [\[119\]](#)

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 49 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.

|  |
|--|
| <b>The Motion for Allowance of Professional Fees is granted.</b> |
|--|

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 February 17, 2020, through March 11, 2021. The order of the court approving employment of Applicant was entered on February 20, 2020. Dckt. 32. Applicant requests fees in the amount of \$6,900.00 and costs in the amount of \$112.75.

## 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 legal advice and legal services regarding general case administration including but not limited to: investigation of Estate assets; an objection to Debtor's exemptions; motion to compel turnover of Estate property; and the sale of the Estate's nonexempt equity in real property. The Estate has \$37,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 4.0 hours in this category; however, Applicant did not bill for any of this time. Applicant prepared Applicant's fee agreement, reviewed deadlines to file motions and complaints, and prepared Applicant's fee application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 3.7 hours in this category; however, Applicant did not bill for any of this time. Applicant investigated the ownership and valuation of property of the estate. Debtor made attempts to thwart the sale of the property, causing Applicant to have several emails and calls with Trustee and the Real Estate professional hired to assess the value of the property and show it for sale.

Significant Motions and Other Contested Matters: Applicant spent 20.9 hours in this category however, Applicant only billed for 10.2 hours of this time. Applicant prepared and filed: an Objection to Exemptions; a Motion to Compel Turnover Property of the Estate; a response to Debtor's motion to convert; and a response to Debtor's motion to compel abandonment of Property of the Estate.

Sale to Debtor of Estate's Nonexempt Equity in Real Property: Applicant spent 12.8 hours in this category. Applicant prepared the sale agreement; prepared, filed, and appeared at a motion to approve the sale; and reviewed a potential overbidder's interest in the property.

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:



| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Loris L. Bakken, Esq., Attorney              | 41.4        | \$300.00           | \$12,420.00  |
|  | 0           | \$0.00             | <u>\$0.00</u>  |
| <b>Total Fees for Period of Application</b>  |             |                    | \$12,420.00  |

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$112.75 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost, If Applicable</b> | <b>Cost</b> |
|---|-------------------------------------|-------------|
| Postage                                     |                                     | \$63.55     |
| Copies                                      | \$0.10 per page                     | \$49.20     |
|   |                                     | \$0.00      |
|   |                                     | \$0.00      |
| <b>Total Costs Requested in Application</b> |                                     | \$112.75    |

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

##### **Reduced Rate**

Applicant seeks to be paid a single sum of \$6,900.00 for its fees incurred for Client. First and Final Fees in the amount of \$6,900.00 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 \$112.75 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               | \$6,900.00 |
| Costs and Expenses | \$112.75   |

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 \$6,900.00  
Expenses in the amount of \$112.75,

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.

**Final Ruling:** No appearance at the March 11, 2011 hearing is required.

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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, Trustee's Attorney, creditors, and parties requesting special notice on January 6, 2021. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and to File a Motion to Dismiss Case Under Section 707(b) 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 Extend Deadline to File a Complaint Objecting to Discharge and to File a Motion to Dismiss Case Under Sec. 707(b) is granted.**

Tracy Hope Davis, the United States Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Michelle A. Pimentel-Montez's ("Debtor") discharge under 11 U.S.C. § 727 and/or a motion to dismiss under 11 U.S.C. § 707(b) on the basis that U.S. Trustee is investigating the veracity of the Debtors's bankruptcy schedules and statement of financial affairs, amendments, statements made at the 341(a) Meeting of Creditors, and transfers which appear to be undisclosed.

This is the second extension of deadlines to file a complaint objecting to discharge or a motion to dismiss. Movant and Debtor had previously stipulated to an extension. Dckt. 27. The order approving the stipulation was entered by the court on November 2, 2020, which extended the deadlines to and including January 6, 2021. Dckt. 31.

## DISCUSSION

The deadline for filing a complaint objecting to discharge was January 6, 2021. Dckt. 35. The Motion requests that the deadline to object to Debtor's discharge be extended to April 2, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on January 6, 2021, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to April 2, 2021.

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 Extend Deadline to File a Complaint Objecting to Discharge and Motion to Dismiss filed by Tracy Hope Davis, the United States 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 is granted, and the deadline for Movant to object to Michelle A. Pimentel-Montez's ("Debtor") discharge and file a Motion to Dismiss is extended to April 2, 2021.

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

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 November 21, 2019, through and including March 11, 2021. The order of the court approving employment of Applicant was entered on November 29, 2021. Dckt. 90. Applicant requests fees in the amount of \$8,790.00 and costs in the amount of \$158.60.

## 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 legal advice and legal services regarding general case administration including but not limited to: investigation of prepetition transfers; sale of the Estate's nonexempt equity in property of the Estate; and the preparation and filing of a motion to compel abandonment of promissory notes. The Estate has \$22,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 7.4 hours in this category; however, Applicant did not bill for any of this time. Applicant prepared Applicant's fee agreement, reviewed deadlines to file motions and complaints, prepared the application for compensation of the accountant for the Estate, and prepared Applicant's fee application.

Investigation of Prepetition Transfers: Applicant spent 2.6 hours in this category; however, Applicant did not bill for any of this time. Applicant investigated a prepetition transfer of the Estates interest in property to the Debtor's sister.

Sale to Debtor of Estate's Nonexempt Equity in Property of the Estate: Applicant spent 8.8 hours in this category. At Trustee's direction, Applicant reviewed a promissory note and assignment documents; prepared the sale agreement; and prepared, filed, and appeared at a motion to approve the sale.

Sale of Property of the Estate: Applicant spent 20.5 hours in this category. Applicant prepared the sale agreement and filed the motion for sale; had several communications with a potential overbidder; and appeared at the hearing on this motion.

Significant Motions and Other Contested Matters: Applicant spent 3.5 hours in this category; however, Applicant did not bill for any of this time. Applicant prepared, filed, and appeared at a motion to abandon promissory notes.

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:

| <b>Names of Professionals<br/>and<br/>Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based<br/>on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
|--|-------------|--------------------|--|

|   |      |          |               |
|---|------|----------|---------------|
| Loris L. Bakken, Esq.,<br>Attorney          | 42.8 | \$300.00 | \$12,840.00   |
|   | 0    | \$0.00   | <u>\$0.00</u> |
| <b>Total Fees for Period of Application</b> |      |          | \$12,840.00   |

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$158.60 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost,<br/>If Applicable</b> | <b>Cost</b> |
|---|---|-------------|
| Postage                                     |   | \$92.80     |
| Copies                                      | \$0.10 per page                         | \$65.80     |
|   |   | \$0.00      |
| <b>Total Costs Requested in Application</b> |   | \$158.60    |

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

##### **Reduced Rate**

Applicant seeks to be paid a single sum of \$8,790.00 for its fees incurred for Client. First and Final Fees in the amount of \$8,790.00 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 \$158.60 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 | \$8,790.00 |
|------|------------|



Costs and Expenses            \$158.60

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 \$8,790.00

Expenses in the amount of \$158.60,

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.

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Maria T. Stokman, CPA at Atherton and Associates, LLP, the Accountant ("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 July 9, 2020, through and including March 11, 2021. The order of the court approving employment of Applicant was entered on July 20, 2020. Dckt. 189. Applicant requests fees in the amount of \$1,350.00 and costs in the amount of \$0.00.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

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

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

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

A review of the application shows that Applicant's services for the Estate include: correspondence with Trustee regarding the sale of property of the Estate and preparation of tax returns; tax planning and preparation; and time spent on employment and compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

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

General Case Administration: Applicant spent 1.6 hours in this category. Applicant discussed with Trustee the sale of property of the estate and the preparation of the Estate's tax returns, and spent time preparing and finalizing her employment and fee applications.

Tax Planning and Preparation: Applicant spent 3.8 hours in this category. Applicant reviewed transactional activity for tax implications, compiled financial data, and prepared federal and state tax returns for the period ending December 31, 2020.

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:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Maria T. Stokman, CPA                        | 5.4         | \$250.00           | \$1,350.00   |
|  | 0           | \$0.00             | <u>\$0.00</u>  |
| <b>Total Fees for Period of Application</b>  |             |                    | \$1,350.00   |

### **Costs & Expenses**

Applicant does not seek the allowance and recovery of costs and expenses.

## 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 \$1,350.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

|                    |            |
|--------------------|------------|
| Fees               | \$1,350.00 |
| Costs and Expenses | \$0.00     |

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

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

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

The Motion for Allowance of Fees and Expenses filed by Maria T. Stokman, CPA at Atherton and Associates, LLP (“Applicant”), Accountant 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 Maria T. Stokman, CPA at Atherton and Associates, LLP is allowed the following fees and expenses as a professional of the Estate:

Maria T. Stokman, CPA at Atherton and Associates, LLP,  
Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1,350.00  
Expenses in the amount of \$0.00,

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

11. [09-93059-E-7](#)  
[BLF-6](#)

DUDLEY/TERESA CARLL  
Michael McEnroe

MOTION FOR COMPENSATION BY THE  
BAKKEN LAW FIRM FOR LORIS L.  
BAKKEN, TRUSTEES ATTORNEY(S)  
1-25-21 [[63](#)]

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of 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.

|  |
|--|
| <b>The Motion for Allowance of Professional Fees is granted.</b> |
|--|

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 September 7, 2019, through and including March 11, 2021. The order of the court approving employment of Applicant was entered on October 8, 2021. Dckt. 28. Applicant requests fees in the amount of \$3,420.00 and costs in the amount of \$74.25.

## **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 legal advice and legal services regarding general case administration including but not limited to: employment of special litigation counsel; settlement and motion to compromise; and settlement with Debtors an motion to compromise. Per Trustee, it is estimated that the Estate will hold \$8,513.88 of unencumbered monies after receipt of funds in a lawsuit, payment to Special Counsel, and payment to Debtor. Trustee’s Decl., Dckt. 66 at ¶ 3. 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 3.6 hours in this category; however, Applicant did not bill for any time in this category. Applicant prepared Applicant’s fee agreement, employment application, and fee application.

Employment of Special Litigation Counsel: Applicant spent 6.5 hours in this category; however, applicant only billed for 4.2 hours. Applicant, at Trustee’s direction, communicated with Special Counsel prosecuting a lawsuit (the “Lawsuit”) on behalf of the Estate, and prepared and filed motion for employment and compensation of Special Counsel.

Significant Motions and Other Contested Matters: Applicant spent 16.3 hours in this category. Applicant communicated with Special Counsel regarding settlement of the Lawsuit, and at Trustee’s direction, prepared and filed a motion to compromise. Applicant also communicated with Debtor’s counsel regarding the Lawsuit and distribution of settlement proceeds, and prepared and filed the settlement agreement and motion to compromise.

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:

| <b>Names of Professionals<br/>and<br/>Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based<br/>on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
|--|-------------|--------------------|--|



|   |      |          |               |
|---|------|----------|---------------|
| Loris L. Bakken, Esq.,<br>Attorney          | 26.4 | \$300.00 | \$7,920.00    |
|   | 0    | \$0.00   | <u>\$0.00</u> |
| <b>Total Fees for Period of Application</b> |      |          | \$7,920.00    |

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$74.25 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost,<br/>If Applicable</b> | <b>Cost</b> |
|---|---|-------------|
| Postage                                     |   | \$43.55     |
| Copies                                      | \$0.10 per page                         | \$30.70     |
|   |   | \$0.00      |
| <b>Total Costs Requested in Application</b> |   | \$74.25     |

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

##### **Reduced Rate**

Applicant seeks to be paid a single sum of \$3,420.00 for its fees incurred for Client. First and Final Fees in the amount of \$3,420.00 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 \$74.25 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               | \$3,420.00 |
| Costs and Expenses | \$74.25    |

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 \$3,420.00  
Expenses in the amount of \$47.25,

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.

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.

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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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.**

Alvaro Hernandez and Jazmin Elizabeth Hernandez ("Debtors") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because Trustee is considering making this an asset case and possibly threatening to sell Debtor's home. Debtor's parents have an equitable interest in the property, but are not parties to the deed. Due to the uncertainties and hazards of litigation, Debtor's would rather pay a 100% plan. Motion, Dckt. 24 at ¶ 1.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

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 Convert filed by Alvaro Hernandez and Jazmin Elizabeth Hernandez (“Debtors”) 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 Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

**Final Ruling:** No appearance at the March 11, 2021 hearing is required.  
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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 24, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses 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.

Upon review of the Motion, the *de minimis* amount at issue, the cost of appearing at a hearing, and the tax obligation to be paid, the court has determined that oral argument will not be of assistance in rendering a decision in this matter and grants it *ex parte*.

**The Motion for Allowance of Administrative Expenses is granted. The Motion for Entry of Order Retroactive to Date of Filing of Motion for Allowance of Administrative Expenses is granted.**

Irma C. Edmonds ("Movant") requests allowance of post-petition payment of administrative expenses in the amount of \$823.00 for payment of the Estate's tax obligation for 2020 tax year corporate state income taxes ("Tax Obligation") to the California State Franchise Tax Board ("FTB"), payable by or before March 15, 2021 on behalf of Valley Distributors, Inc. ("Debtor").

Movant additionally requests the order approving payment of the subject administrative expenses be made retroactive to the date of the filing of the instant motion, February 22, 2021.

## DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . .,” and Section 503(b)(1)(B) further accords administrative expense status to “any tax...incurred by the estate....”

Here, Movant requests allowance of, and authorization to pay from available funds, post-petition tax obligations to the Franchise Tax Board incurred by the Estate.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for payment of the Estate’s Tax Obligations for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses in the amount of \$823.00.

### Request for Entry of Order Retroactive to Date of Filing

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor’s estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

Here, Movant was apprised by the estate’s court appointed CPA that the sum of \$823.00 will be due and owing to the Franchise Tax Board, effective March 15, 2021. Movant seeks the entry of order authorizing the administrative expenses payment to February 22, 2021, the date the instant motion was filed. Prompt payment being necessary to preserve the interests of the Estate, and avoid additional accrual of interest and penalties, the court finds that such retroactive authorization is proper 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 Administrative Expense filed by Irma C. Edmonds (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay California Franchise Tax Board \$823.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).