UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 24, 2022 at 10:30 a.m.

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1. **20-90435-E-7** **CHARLES MACAWILE** **MOTION FOR COMPENSATION FOR**
HCS-5 **David Johnston** **RYAN, QUINN & HORN, LLP,**
1 thru 4 **ACCOUNTANT(S)**
2-15-22 [223]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 15, 2022. By the court's calculation, 37 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 Certificate of Service, Dckt. 228, states that the Notice of Hearing was served on all parties in interest in this case, directing the court to see the list of such persons on the attachment to the Certificate of Service. However, there is no attachment to the Certificate of Service.

At the hearing, **xxxxxxx**

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

The Motion for Allowance of Professional ~~Fees is granted.~~

Paul E. Quinn, the Accountant ("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 July 29, 2021, through March 24, 2022. The order of the court approving employment of Applicant was entered on July 22, 2021. Dckt. 185. Applicant requests fees in the amount of $7,350.00 and costs in the amount of $38.00.

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 analysis of the tax basis of the real property located at 5412 Kiernan Avenue, Salida, California (the "Real Property"), which the Chapter 11 Trustee sold. Additionally the Applicant corresponded and communicated with the Trustee, reviewed the voluminous records the Debtor provided in support of the transactional activity to analyze the tax basis in the Real Property, prepared 2020 and 2021 federal and state income tax returns for the bankruptcy estate, and corresponded with the respective authorities' insolvency group to request prompt audit determination. The Estate has $1,130,045.00 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 29.4 hours in this category. Applicant analyzed the tax basis of the real property located at 5412 Kiernan Avenue, Salida, California, which the Chapter 11 Trustee sold. Additionally the Applicant corresponded and communicated with the Trustee, reviewed the voluminous records the Debtor provided in support of the transactional activity to analyze the tax basis in

the Real Property, prepared 2020 and 2021 federal and state income tax returns for the bankruptcy estate, and corresponded with the respective authorities' insolvency group to request prompt audit determination.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Paul E. Quinn, CPA; CFF	29.40	$250.00	$7,350.00
Total Fees for Period of Application			$7,350.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $38.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage and Copies	$38.00	$38.00
Total Costs Requested in Application		$38.00

~~**FEES AND COSTS & EXPENSES ALLOWED**~~

~~**Fees**~~

~~**Hourly Fees**~~

~~The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $7,350.00 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.~~

~~**Costs & Expenses**~~

~~First and Final Costs in the amount of $7,388.00 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.~~

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

Fees $7,350.00
Costs and Expenses $38.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Paul E. Quinn of Ryan, Christie, Quinn & Horn, LLP ("Applicant"), Accountant 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 Paul E. Quinn is allowed the following fees and expenses as a professional of the Estate:

Paul E. Quinn, Professional employed by the Chapter 7 Trustee

Fees in the amount of $7,350.00
Expenses in the amount of $38.00,

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

2. **20-90435-E-7** **CHARLES MACAWILE** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)**
HCS-6 **David Johnston** **2-16-22 [229]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 16, 2022. By the court's calculation, 36 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 Certificate of Service, Dckt. 234, states that the Notice of Hearing was served on all parties in interest in this case, directing the court to see the list of such persons on the attachment to the Certificate of Service. However, there is no attachment to the Certificate of Service.

At the hearing, **xxxxxxx**

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

The Motion for Allowance of Professional ~~Fees is granted.~~

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Gary 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 July 13, 2021, through December 15, 2021. The order of the court approving employment of Applicant was entered on July 16, 2022. Dckt. 180. Applicant requests fees in the amount of $27,219.71 and costs in the amount of $99.21.

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 general legal case administration, strategy regarding handling of proceeds of sale of Salida Property and advising the Trustee regarding claims, and preparing a motion to set Chapter 11 Administrative Claims bar date. The Estate has $1,130,045.00 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 44.1 hours in this category. Applicant reviewed the case, had initial conversations with the Trustee about the case, prepared employment applications, and prepared fee applications.

Strategy Regarding Handling of Proceeds of Sale of Salida Property and Advise Trustee Regarding Claims: Applicant spent 26.9 hours in this category. Applicant reviewed the papers on the motion to sell the Salida Property and advised the Trustee regarding same. Additionally, investigation by the Trustee and the Applicant revealed the Debtor had entered into a settlement agreement between him and his spouse. Applicant reviewed the settlement agreement and advised the Trustee regarding same. The Applicant prepared for and examined the Debtor at the Section 341 meeting of creditors. After the Section 341 meeting was concluded, Applicant prepared a list of materials required from Debtor's counsel and worked with them to obtain the materials. Applicant also received voluminous documentation provided by Debtor. In addition, Applicant reviewed claims filed by various creditors and advised the Trustee regarding those claims.

Motion to Set Chapter 11 Administrative Claims Bar Date: Applicant spent 13.9 hours in this category. Applicant prepared a motion asking the court to set an administrative claims bar date for administrative claims incurred while the case was in Chapter 11. Applicant prepared and served notice of entry of order as directed by the court. Applicant reviewed Debtor's counsel's application for administrative

expenses incurred while the case was in Chapter 11 and advised the Trustee on whether there existed grounds to oppose it.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A. Suntag (2021)	32.6	$400.00	$13,040.00
Dana A. Suntag (2022)	5.9	$415.00	$2,448.50
Amy N. Seilliere (2021)	28.8	$245.00	$7,056.00
Amy N. Seilliere (2022)	17.6	$260.00	$4,576.00
Total Fees for Period of Application			$27,120.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $99.21 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies ($.10 per page)	$20.10	$20.10
Postage	$37.91	$37.91
CourtCall Hearing on HCS Fee Application	$41.20	$41.20
Total Costs Requested in Application		$99.21

~~**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 $27,120.50 are approved~~

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

Costs & Expenses

The court does not award reimbursement for costs incurred using CourtCall. Accordingly, First and Final Costs in the amount of $58.01 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$27,120.50
Costs and Expenses	$58.01

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

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

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

The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for Gary 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

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

Fees in the amount of $27,120.50
Expenses in the amount of $58.01,

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.

3. 20-90435-E-7 HCS-8
CHARLES MACAWILE
David Johnston
MOTION FOR COMPENSATION FOR GARY R. FARRAR, CHAPTER 7 TRUSTEE(S)
2-16-22 [235]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 16, 2022. By the court's calculation, 36 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 Certificate of Service, Dckt. 239, states that the Notice of Hearing was served on all parties in interest in this case, directing the court to see the list of such persons on the attachment to the Certificate of Service. However, there is no attachment to the Certificate of Service.

At the hearing, **xxxxxxx**

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

The Motion for Allowance of ~~Professional Fees is granted~~.

Gary R. Farrar, the Chapter 7 Trustee, ("Applicant") for the Estate of Charles Collantes Macawile, Jr. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 21, 2021, through March 24, 2022.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

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

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

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

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

Benefit to the Estate

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

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

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

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

A review of the application shows that Applicant's services for the Estate include reviewing the Debtor's petition, schedules and statements, tax returns and pay information, and maintained a proper Trustee's bond. Applicant retained general counsel, a CPA, and a real estate broker and worked with these professionals to determine the basis, for tax purposes, of the real property. The Applicant appeared at the Section 341 meetings of creditors. Applicant submitted the Trustee's Final Report and reviewed the draft fee applications of the professionals employed. The Trustee communicated with the Subchapter V Trustee regarding the handling of the case when it was in Chapter 11 and obtained copies of the report of sale for the real property and closing statement and reviewed these documents. The Trustee also received the Debtor's bank and escrow statements from the sale from Mr. Sousa, and reviewed them. The Applicant had multiple communications with Debtor's counsel related to the capital gain determination of the property and assisted in the finalization of the tax returns. The Applicant investigated and reviewed documents in connection with the settlement agreement between the Debtor and his spouse, Evelyn Cruz. The Applicant directed his counsel to file a motion to set an administrative claims bar date and reviewed the subsequently filed claims. The Estate has $1,130,045.30 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 15.7 hours in this category. Applicant reviewed the Debtor's petition, schedules and statements, tax returns and pay information, and maintained a proper Trustee's bond. Applicant retained general counsel, a CPA, and a real estate broker and worked with these professionals to determine the basis, for tax purposes, of the real property. The Applicant appeared at the Section 341 meetings of creditors. Applicant submitted the Trustee's Final Report and reviewed the draft fee applications of the professionals employed.

Accounting/Auditing: Applicant spent 15.9 hours in this category. Applicant communicated with the Subchapter V Trustee regarding the handling of the case when it was in Chapter 11 and obtained copies of the report of sale for the real property and closing statement and reviewed these documents. The Trustee also received the Debtor's bank and escrow statements from the sale from Mr. Sousa, and reviewed them. The Applicant had multiple communications with Debtor's counsel related to the capital gain determination of the property and assisted in the finalization of the tax returns.

Asset Analysis/Recovery: Applicant spent 7 hours in this category. Applicant investigated and reviewed documents in connection with the settlement agreement between the Debtor and his spouse, Evelyn Cruz.

Claims Administration: Applicant spent 2.2 hours in this category. Applicant directed his counsel to file a motion to set an administrative claims bar date and reviewed the subsequently filed claims.

Applicant requests the following fees:

Applicant notes this case was previously converted from a Subchapter V. The Subchapter V Trustee distributed approximately $1.66 million before the case was converted to a Chapter 7. Therefore, Trustee states, Trustee is only seeking to collect compensation of 3% of the amount he is distributing, in accordance with 11 U.S.C. § 326(c):

> If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

Trustee requests fees on the amount that has not yet been distributed, $1,130,045.30. Three-percent (3%) of this figure is $33,901.36. However, Trustee is requesting $34,327.00. There appears to be a $425.64 discrepancy. Upon quick calculation, the $34,327.00 figure would be Trustee's fees if Trustee had $1,144,233.33 to distribute.

At the hearing, XXXXXXXXXX

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $38.26 for postage, photocopying, file folders, and envelopes, pursuant to this application.

~~**FEES ALLOWED**~~

~~The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $33,901.36/$34,327.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.~~

~~In this case, the Chapter 7 Trustee currently has $1,130,045.30 of unencumbered monies to be administered. The Chapter 7 Trustee services for the Estate include reviewing the Debtor's petition, schedules and statements, tax returns and pay information, and maintained a proper Trustee's bond. Applicant retained general counsel, a CPA, and a real estate broker and worked with these professionals to determine the basis, for tax purposes, of the real property. The Applicant appeared at the Section 341 meetings of creditors. Applicant submitted the Trustee's Final Report and reviewed the draft fee applications of the professionals employed. The Trustee communicated with the Subchapter V Trustee regarding the handling of the case when it was in Chapter 11 and obtained copies of the report of sale for the real property and closing statement and reviewed these documents. The Trustee also received the Debtor's bank and escrow statements from the sale from Mr. Sousa, and reviewed them. The Applicant had multiple communications with Debtor's counsel related to the capital gain determination of the property and assisted in the finalization of the tax returns. The Applicant investigated and reviewed documents in connection with the settlement agreement between the Debtor and his spouse, Evelyn Cruz. The Applicant directed his counsel to file a motion to set an administrative claims bar date and reviewed the subsequently filed claims. Applicant's efforts have resulted in a realized gross of $1,130,045.30 recovered for the estate. Dckt. 235.~~

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

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

Fees $33,901.36/$34,327.00
Costs and Expenses $38.26

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

IT IS ORDERED that Gary R. Farrar is allowed the following fees and expenses as trustee of the Estate:

Gary R. Farrar, the Chapter 7 Trustee

Fees in the amount of $33,901.36/$34,327.00
Expenses in the amount of $38.26,

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

4. **21-90338-E-7** **JOSE GUZMAN AND** **MOTION FOR ENTRY OF DEFAULT**
21-9014 **GUILLERMINA DE FLORES** **JUDGMENT**
ASM-1 **2-4-22 [13]**
FH TRUCKING, INC. V. GUZMAN

4 thru 5

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Debtor's Attorney and Chapter 7 Trustee on February 4, 2022. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is xxxxx.

FH Trucking, Inc. ("Plaintiff") filed the instant Motion for Default Judgment on February 4, 2022. Dckt. 13. Plaintiff seeks an entry of default judgment for injunctive relief against Jose Manuel Guzman ("Defendant-Debtor") in the instant Adversary Proceeding No. 21-09014.

The instant Adversary Proceeding was commenced on November 4, 2021. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on November 5, 2021. Dckt. 3. The complaint and summons were properly served on Defendant-Debtor. Dckt. 6.

Defendant-Debtor failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant-Debtor pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on January 5, 2022. Dckt. 8.

SUMMARY OF COMPLAINT

Plaintiff filed a complaint determining Plaintiff's claim for $55,920.66 is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A), (B), and (6). Plaintiff states Defendant-Debtor accepted employment from Plaintiff to provide sub-hauling trucking services. Plaintiff states Defendant-Debtor failed to disclose they had no valid driver's license, no valid motor carrier permit, and no vehicle or cargo liability insurance in place. Defendant-Debtor caused a collision while transporting cargo for Plaintiff which led to a total loss of cargo. Stanislaus County Superior Court entered money judgment in favor of Plaintiff for $55,920.66 and determined Defendant-Debtor's conduct constituted fraud.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

Review of Minimum Pleading Requirements for a Motion

Federal Rule of Civil Procedure 7(b) states,

"(b) Motions and Other Papers

(1) In General. A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) **state with particularity the grounds for seeking the order**; and

(C) state the relief sought."

FED. R. CIV. P. 7(b) (emphasis added). The same "state with particularity" requirement is included in Federal Rule of Bankruptcy Procedure 9013 for all motions in the bankruptcy case itself.

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

Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

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

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

Grounds Stated in Motion

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

1. The Motion seeks entry of default judgment against Defendant-Debtor based on Entry of Default and Order Re: Default Judgment Procedures filed in this action on January 5, 2022.

2. Plaintiff asks the court to enter judgment determining the state court judgment is nondischargeable pursuant to 11 USC 523 (a)(2)(A)and(B) and 11USC (a)(6). The court notes there appears to be a typographical error and "11USC (a)(6)" should read 11 U.S.C. § 523(a)(6).

3. The facts and evidence supporting the Motion are included in the Declaration of Angelita Priscilla Ochoa.

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

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

The Motion states that grounds are found in:

A. Declaration of Angelita Priscilla Ochoa. Dckt. 15.

The court notes that Ms. Ochoa's declaration is one that is rich with personal knowledge testimony by this witness. Fed. R. Evid. 601, 602. However, she qualifies her testimony, stating that some of what she states under penalty of perjury she has no personal knowledge of she merely states them "on information and belief, and to those [information and belief] matters I believe [but have personal knowledge basis to testify under penalty of perjury] believe them to be true [because then I win]. Declaration, p. 4; Dckt. 15 [with the bracketed words being the court's observations about the testimony purported to be under penalty of perjury]. While pleading in a complaint or motion may be bases on information and believe, the court is unaware of any legal authority for the proposition that the required personal knowledge for testimony under penalty of perjury is mere "I believe it should be true."

It may well be this "information and belief" reference is an old, legacy provision in a declaration form that nobody has read for decades.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

As addressed above, the Motion does not state with particularity the grounds upon which the requested relief, entry of a nondischargeable judgment, is based. Rather, it states just the relief requested, directing the court to canvas the evidence to assemble grounds. Plaintiff does not provide the court with the applicable law, the elements that must be established for the relief requested and how sufficient evidence

is provided. While it appears that Plaintiff and Plaintiff's counsel has assembled evidence to support the granting of relief requested.

At this juncture, the court has two options. It could deny the Motion without prejudice and require a new motion, supporting evidence, and notice be filed for a new hearing. This is not a situation where Plaintiff's counsel is a "repeat offender" in failing to comply with the requirements of Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007. In such situations, the court will continue the hearing and allow the movant to file a supplemental pleading (not an amended motion), which states the grounds upon which the requested relief is based, the applicable law so that the court can line up the grounds stated, which will be supported by the evidence, to the legal requirements of the applicable law.

At the hearing, **xxxxxx**

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 for Entry of Default Judgment filed by FH Trucking, Inc. ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is xxxxxxx

5. **21-90338-E-7** **JOSE GUZMAN AND** **CONTINUED STATUS CONFERENCE RE:**
21-9014 **GUILLERMINA DE FLORES** **COMPLAINT**
CAE-1 **11-4-21 [1]**
FH TRUCKING, INC. V. GUZMAN

Plaintiff's Atty: Armando S. Mendez
Defendant's Atty: unknown

Adv. Filed: 11/4/21
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 1/13/22 so the Parties may focus on the motion for entry of default judgment.

[ASM-1] Motion for Default Judgment filed 2/4/22 [Dckt 13], set for hearing 3/24/22 at 10:30 a.m.

The Status Conference is continued to xxxxxxx on xxxxxxx , 2022.

6. **22-90041-E-11** **AREA X INC.** **STATUS CONFERENCE RE: VOLUNTARY PETITION**
CAE-1 **2-7-22 [1]**

Debtor's Atty: David C. Johnston

Notes:

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2022.

MARCH 22, 2022 STATUS CONFERENCE

The Trustee's Report of the First Meeting of Creditors states that the Responsible Representative of the Debtor and the Debtor in Possession did not appear at the First Meeting of Creditors. March 21, 2022 Docket Entry Report.

No status report has been filed by the Debtor in Possession. No Schedules or Statement of Financial Affairs has been filed by Debtor. The Petition and the Resolution of the Board of Directors is signed by Neftali Alberto as the sole director and identifies him as the president of the Debtor corporation. Dckt. 1.

This name seemed familiar to the court, and a search of the court records shows three filed and dismissed bankruptcy cases for Neftali Jesus Alberto:

Chapter 13 Case 20-90017

Filed.....January 7. 2020
Dismissed.....March 6, 2020

In the Petition, individual debtor Neftali Jesus Alberto states under penalty that his DBA (fictitious name under which he does business personally) is Area X, Inc. On Schedule A/B Neftali Jesus Alberto states under penalty of perjury that he owns no stock in either publicly traded or non-publicly traded incorporated or unincorporated business. 20-90017; Schedule A/B, ¶¶ 18, 19; Dckt. 1. However, on the Statement of Financial Affairs, Question 27, Neftali Jesus Alberto, sales he is a member of a limited liability company or limited partnership named "Area X, Inc." If such was a limited liability company or a limited partnership, it could not state that it was an "Inc."

Chapter 13 Case 19-91091

Filed.....December 17, 2019
Dismissed.....January 6, 2020

In this case, debtor Neftali Jesus Alberto again states under penalty of perjury that his person DBA (doing business as) for doing his personal business is "Area X, Inc." 19-91091; Dckt. 1 at 2.

Chapter 13 Case 19-90973

Filed.....October 30, 2019
Dismissed.....December 18, 2019

In this case, debtor Neftali Jesus Alberto again states under penalty of perjury that his person DBA (doing business as) for doing his personal business is "Area X, Inc." 19-90973; Dckt. 1 at 2. On Schedule A/B debtor Neftali Jesus Alberto states under penalty of perjury that he owns no stock in any entities. *Id*., Schedule A/B Questions 19, 20. He also states under penalty of perjury that he is a member of a limited liability company or limited partnership that identifies itself as a corporation - Area X, Inc. *Id*.; Stmt of Fin Affairs, Question 27.

The California Secretary of State identifies Area X, Inc. as a active corporation in California, not a DEB of Neftali Alberto doing business personally. [Fn.1.]

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

It is also interesting in reviewing the Schedule I's filed in the prior cases, while stating he is employed by Area X, Inc., Debtor states under penalty of perjury that he is paid no wages or commissions, but that he has $10,250 in net income in operating his business (19-90973; Dckt. 21 at 19-20; and 20-90017; Dckt. 1 at 27-28). Debtor shows paying any state or federal income tax or self-employment tax if he is doing business personally on the Schedules J filed in the prior cases. No basis is shown for Neftali Alberto to not have to pay income taxes on more than $120,000 in net annual income. In addition to his $120,000 in income, Debtor states that his non-debtor Spouse has $7,699 in monthly income, which is an additional $92,388, for which the non-debtor spouse in annual income. This results in Debtor and his non-debtor spouse having $212,388 in income for which they pay ($955) a month in federal and stated income taxes and Social Security through withholding on the non-debtor spouses income.

Because Area X, Inc., the Debtor in the present case, has not filed Schedules, the court and parties in interest does not have information to see what the Debtor is and whether it is merely the DBA for Neftali Alberto.

At the Status Conference, **xxxxxxx**

7.	**20-90349-E-11** **DCJ-5** **Item 7 thru 8**	**R. MILLENNIUM TRANSPORT, INC.** **David Johnston**	**OBJECTION TO CLAIM OF GINA WINDORSKI, CLAIM NUMBER 2** **1-26-22 [151]**

Subchapter V

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 11 Trustee, and Office of the United States Trustee on January 26, 2022. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 2 of Gina Windorski is xxxxxxx .

R. Millennium Transport, Inc. ("Objector-Debtor") requests that the court disallow the claim of Gina Windorski ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $68,187.09. Dckt. 151. Objector-Debtor asserts that:

1. The Superior Court of California, Stanislaus County, entered a judgment in favor of Objector-Debtor and determined that Objector-Debtor did not owe anything to Creditor.

2. Issue preclusion bars Creditor from asserting a claim against Objector-Debtor.

3. Creditor's Proof of Claim is not supported by any evidence.

Objection Deficiency

1. No Declaration - Failure to Provide Evidence

Objector-Debtor filed their Objection to Allowance of Creditor's Claim with a number of Exhibits but failed to include Objector-Debtor's Declaration in support. Objector-Debtor's counsel should be aware of this requirement:

> Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4). LOCAL BANKR. R. 9014-1(d)(3)(D).

2. Judicial Notice

Objector-Debtor requested the court to take judicial notice of Exhibits A through D pursuant to Federal Rules of Evidence 201(b). Dckt. 151 at 4:6-7. Exhibits A through D include the Objector-Debtor's claim in Small Claims Court, the Creditor's counterclaim, a minute order for Objector-Debtor and Creditor's small claim hearing, and the Notice of Entry of Judgment in connection with Objector-Debtor and Creditor's claims/counterclaims. See Dckt. 153. These are not matters in which the court may take judicial notice of. Objector-Debtor's counsel is reminded that Federal Rules of Evidence 201(b) states:

> The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Federal Rules of Evidence 201. Objector-Debtor's facts contained in Exhibits A through D are neither generally known within this court's territorial jurisdiction, nor are they from sources whose accuracy cannot reasonably be questioned. As mentioned, Objector-Debtor failed to provide a Declaration in support to authenticate the Exhibits. Without authentication, the court can certainly reasonably question the accuracy and content of the sources found in Exhibits A through D. Therefore, the court declines Objector-Debtor's request to take judicial notice of Objector-Debtor's Exhibits A through D.

At the hearing, Objector-Debtor addressed the substantive defects with their opposition **XXXXXXX**

Creditor's Opposition

Creditor filed an Opposition on March 10, 2022. See Dckt. 164. In her Opposition, Creditor asserts Claim 2-1 is separate from the underlying small claim case Objector-Debtor is objecting to. *Id.* Creditor references Objector-Debtor's Exhibit A, stating that Creditor's counterclaim was for various medical costs associated with Objector-Debtor's Chief Executive Officer's physical assault of Creditor. *Id.*

Creditor additionally contends that because Claim 2-1 was not included in her countersuit against Objector-Debtor, *Pitzen v. Superior Court* is not dispositive. *Id.* Creditor finally asserts that Claim 2-1 was originally filed against Objector-Debtor with the Labor Commissioner's Office, but had to be filed again with the Bankruptcy court after Objector-Debtor filed for bankruptcy. *Id.*

Creditor does not address Objector-Debtor's assertion that Creditor's Proof of Claim lacks sufficient supporting evidence. The court notes that Creditor's Exhibit C and Exhibit D detail the specific employment-related claims Creditor has against Objector-Debtor and include the exact balance due in the amount $68,187.09. See Exhibit D, Dckt. 164.

Opposition Deficiencies

1. Pleadings filed as one document

Creditor filed the Opposition and supporting exhibits as one document. The Local Bankruptcy Rules require that the motion, objection, opposition, each declaration, and the exhibits (which may be combined into one indexed document) must be filed as separate pleadings. LOCAL BANKR. R. 9004-2(c). Failure to properly organize pleadings and file them in compliance with the Local Bankruptcy Rules may result in the court not identifying such hidden pleading for consideration.

2. No Proof of Service

Creditor appearing *pro se* did not file a Proof of Service sufficiently demonstrating that Creditor's Opposition and supporting documents were delivered to Objector-Debtor or Objector-Debtor's attorney. Objector-Debtor's attorney, David C. Johnston, is a regularly appearing attorney who receives electronic service of all documents filed within their cases; therefore, the court believes that Objector-Debtor's attorney did receive notice of Creditor's Opposition. However, this does not waive the service requirement for the *pro se* Creditor. Even without counsel, Creditor is still required to file a Proof of Service along with her pleadings and other supporting documents. The Proof of Service should itself be filed as a separate document identifying, by title, each of the documents served and to whom. LOCAL BANKR. R. 9004-2(e).

3. No Declaration - Failure To Provide Evidence

Creditor filed an Opposition making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D).

At the hearing, Creditor addressing the procedural and substantive defects with their opposition XXXXXXXXXX

APPLICABLE LAW

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the *prima facie*

validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

DISCUSSION

Objector-Debtor asserts that Objector-Debtor sued Creditor and Jacob Price ("Price") in the Superior Court of California, Stanislaus County, on April 14, 2020 for $4,600.00 on the basis that Creditor and Price, former employees, had embezzled money from Objector-Debtor. Dckt. 151 at 1-2. On September 18, 2020, the Superior Court found in favor of Objector-Debtor and against Creditor and Price in the amount $3,500.00 plus costs, and determined that Objector-Debtor did not owe anything to Creditor and Price. *Id.* at 2:12-14. Objector-Debtor states that all relevant documents associated with Objector-Debtor's case against Creditor and Price can be found in Exhibits A-D, Dckt. 153.

Res Judicata and Collateral Estoppel

The court notes that Objector-Debtor provides the court with no points and authorities, and legal analysis of the Doctrines of Res Judicata and Collateral Estoppel to establish that Creditor's claim is barred based on a judgment in prior litigation. Objector-Debtor does direct the court to the California District Court of Appeal decision Pitzen v. Superior Court, *infra*, but leaves it to the court to analyze that decision, assemble the facts (alleged but not supported by evidence as required by the Federal Rules of Evidence), and then have the court present such analysis for Objector-Debtor.

Reading the Decision in *Pitzen*, this court notes the following language as it relates to not forcing someone sued in small claims court to ramp up the litigation from small claims scope to full blown Superior Court litigation because a "mere" limited dollar amount small claims action is filed.

> *Sanderson* and its progeny all involved a claim that collateral estoppel applied against a small claims defendant who had lost in the small claims court. (*Sanderson, supra*, 17 Cal.2d at p. 565*; Perez, supra*, 27 Cal.3d at pp. 881–882; *Rosse, supra*, 34 Cal.App.4th at p. 1050.) In such a situation, the **Sanderson exception to the usual application of collateral estoppel prevents the unfairness inherent in a plaintiff being allowed to force a defendant into small claims court, obtain a favorable determination on an issue, and then preclude the defendant from relitigating the issue in a subsequent action in superior court, where the potential damages may be much greater.** For example, in *Sanderson*, the plaintiff obtained a judgment in small claims court for $ 12.58 stemming from an automobile accident. (Sanderson, supra, 17 Cal.2d at p. 565.) The plaintiff then sought to use the favorable determination of the defendant's negligence from the small claims proceeding in a subsequent action in the superior court for personal injuries. (*Ibid.*) **The *Sanderson* court held that the defendant could relitigate the issues of his negligence and the plaintiff's contributory negligence in the superior court action.** (*Id.* at p. 573.)
>
> **However, we are aware of no case in which the exception created in *Sanderson*, supra, 17 Cal.2d 563, to the usual application of collateral estoppel has been applied to allow a small claims plaintiff to relitigate an issue decided against him in small claims court.** This dearth of authority in the more than 60 years since *Sanderson* was decided exists for good reason. "'[C]ollateral estoppel is an equitable concept based on fundamental principles of fairness.' " (*White Motor Corp. v. Teresinski* (1989) 214 Cal. App. 3d 754, 763, quoting *Sandoval v. Superior Court* (1983) 140 Cal. App. 3d 932, 941 [190 Cal. Rptr. 29].) Its

application is appropriate only when consistent with public policy. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 829.)

Both fundamental fairness and the public policy embodied in the small claims statutory scheme require that the ***Sanderson*** **exception be limited to issues decided against small claims defendants**. In the context of small claims actions, it is a "general principle that small claims proceedings [are to] be both speedy and final." *(ERA-Trotter Girouard Assoc. v. Superior Court* (1996) 50 Cal.App.4th 1851, 1856.) However, small claims plaintiffs and defendants "do not enter the forum upon equal terms." (*Superior Wheeler Cake Corp., supra,* 203 Cal. at p. 387.) Only **small claims plaintiffs affirmatively choose to litigate in small claims court (§ 116.320, subd. (a)); small claims defendants do not.** In our view, applying the Sanderson exception to allow a plaintiff who lost in small claims court to resurrect his claim in a subsequent action, as in this case, and at the same time preclude the victorious small claims defendant from asserting collateral estoppel, would be fundamentally unfair.

In addition, **refusing to accord collateral estoppel effect to issues decided against defendants is consistent with the policy of fostering "speedy and final" adjudication in small claims matters**. (*ERA-Trotter Girouard Assoc. v. Superior Court, supra*, 50 Cal.App.4th at p. 1856.) A contrary rule would encourage small claims defendants to appeal small claims judgments entered against them, no matter how small, in order to guard against issue preclusion in a subsequent superior court action. However, no such concerns are applicable with regard to small claims plaintiffs, who have already chosen to forfeit their right to appellate review by bringing a small claims action. According collateral estoppel effect to issues decided in defendants' favor is also consistent with the public policy of fostering "speedy and final" resolutions in small claims actions. (*Ibid.*)

In summary, we can perceive of **no rationale for refusing to afford collateral estoppel effect to claims litigated and decided against a small claims plaintiff**. Fundamental fairness dictates that such a plaintiff, having chosen to litigate in an informal setting by bringing an action in small claims court, cannot cite the informality of that forum to gain a second chance to litigate a previously decided issue in a related matter. Allowing a small claims plaintiff to relitigate an issue already decided against him in the forum of his choice is inconsistent with the public policy that "a plaintiff electing to proceed in a small claims court is to be finally bound by an adverse judgment." (*Cook, supra*, 274 Cal. App. 2d at p. 678.)

Pitzen v. Superior Court, 120 Cal. App. 4th 1374 (2004) (emphasis added).

Objector-Debtor further asserts that issue preclusion bars Creditor from asserting a claim against Objector-Debtor, citing *Pitzen v. Superior Court*, 120 Cal.App.4th 1374 (Cal.Ct.App. 2004). Objector-Debtor states that the *Pitzen* court held that when a small claims plaintiff loses their case, they are barred from bringing a subsequent proceeding. Dckt. 151 at 2:21-25. Objector-Debtor references California Code of Civil Procedure § 116.390(a), which permits "a defendant whose counter-claim exceeds the jurisdiction of the small claims division to commence an action in a court of competent jurisdiction and then request a transfer of the plaintiff's small claims action." *Id.* at 3:1-4. Objector-Debtor states that in filing a "Defendant's Claim", Creditor and Price waived any recovery in excess of $10,000.00 and became subject to issue preclusion if they lost, which they did. *Id.* at 3:4-6.

As one can see, Objector-Debtor's argument is directly contrary to the plain language of the California Court of Appeal Decision in Pitzen which Objector-Debtor cites as its legal authority for the Objection based on Collateral Estoppel.

In *Pitzen*, the parties in interest were involved in a motor vehicle collision and the small claims plaintiffs each separately sued the defendant in small claims court, both claiming that the defendant caused the accident. 120 Cal.App.4th 1374, 1377 (Cal.Ct.App. 2004). The cases were eventually consolidated, and the small claims court found that the plaintiffs failed to meet their burden of proving that the defendant caused the accident. *Id.* One of the plaintiffs later filed another action against both the defendant and the other plaintiff, *based on the same accident that was the subject of the small claims action*. *Id.* The other plaintiff filed a cross-complaint against the defendant, and the defendant responded by filing a motion to dismiss the cross-complaint, contending that the claims were barred by the judgment in the original small claims action. *Id.* While the court overruled the motion to dismiss, it granted the defendant's later petition for a writ of mandate, holding that the cross-complaint against the defendant was barred by collateral estoppel, or issue preclusion, as it was *based on the same accident that was the subject of the small claims action*. *Id.* at 1378.

Specifically, *Pitzen* states: "A plaintiff's relitigation, in a subsequent related action, of an issue expressly decided against the plaintiff in a small claims action is precluded, where the record is *sufficiently clear as to the issue actually litigated and decided in the small claims court*." *Id.* at 1377 (emphasis added)

Assertion that California Code of Civil Procedure § 116.390(a)
Results in Collateral Estoppel of Claim

In the Motion Objector-Debtor assert that the California Code of Civil Procedure allows a defendant in a small claims action to states that:

> When Windorski and Price case filed their "Defendant's Claim" they became treated procedurally and substantively to the same extent as if they had been plaintiffs. California Code of Civil Procedure § 116.390(a) allows a defendant whose counter-claim exceeds the jurisdiction of the small claims division to commence an action in a court of competent jurisdiction and then request a transfer of the plaintiff's small claims action. By Windorski and Price filing their "Defendant's Claim" they both waived any recovery in excess of $10,000.00 and became subject to issue preclusion if they lost, which they did.

Motion, p. 2:26, 3:1-6; dckt. 151. California Code of Civil Procedure § 116.390(a) provides:

> § 116.390. Transfer of action when defendant's claim exceeds jurisdictional limit
>
> (a) **If a defendant has a claim against a plaintiff** that exceeds the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and the **claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim**, the **defendant may** commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

As one can see from the plain language of this statute, a defendant may, but is not required to commence a separate action for defendant's claim that relates to the same contract, transaction, matter, or event which

is the subject of the small claims plaintiff's action.

Additionally, Creditor's claim in this Bankruptcy Case is for $68,187.09 and is stated to be for "Unpaid Wages and Penalties." Proof of Claim 2-1, ¶¶ 7, 8. In Objector-Debtor's small claims action, the claim asserted by Debtor Objection is stated by Defendant-Objection to be:

(3) The plaintiff claims the defendant owes $ $4,600.00. (Explain below):

a. Why does the defendant owe the plaintiff money?

The defendants owe me this money because Gina was my book keeper and Jacob was her fiancé who both worked for me and embezzled this money via cashed checked by Jacob.

When did this happen? (Date): 1/17/2019

Exhibit A, Plaintiff's Claim and Order to Go to Small Claims Court, p. 2, § 3; Dckt. 153. For Objector-Debtor the small claims action, "the contract, transaction, matter, or event which is the subject of the [Objector-Debtor's]" is a "simple" embezzlement, nothing more. It does not seek a determination of wages owed. By the plain language of California Code of Civil Procedure § 116.390(a), Creditor could not use the permissive ability to commence an action in Superior Court and yank Objector-Debtor out of the simple, contained, limited Small Claims Court proceedings.

Objector-Debtor also argues that since Creditor filed a Defendant's Claim in the Small Claims Action, then any and all rights to asserted wages have been determined in favor of Objector-Debtor. A copy of the Defendant's Claim filed by Creditor is provided by Debtor Objector as Exhibit B, Dckt. 153, and the claim stated by Creditor in the Small Claims Court claim is:

(3) The Defendant claims the Plaintiff owes $ 7,500.00 (Explain below):

a. Why does the Plaintiff owe the Defendant money?

b. When did this happen? (Date): September 24, 2019

If no specific date, give the time period: Date started:_____ Through:_____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)
$150 Emergency Room Fee, $30 for Medications, $7,320 for Pain & Suffering for physical assault

Creditor chose to commence a Small Claims action against Objector-Debtor, asserting which on its face is an assault and battery claim, not a claim for wages.

In the Small Claims Entry of Judgment; Exhibit D, Dckt. 153; it states that a judgment was entered

on September 18, 2020 (no copy of the actual Small Claims Judgment has been provided by Objector-Debtor):

A. For Objector-Debtor in the amount of $3,500.00 against Creditor, which is on the claim of embezzlement.

B. Against Creditor and for Objector-Debtor, stating that Objector-Debtor does not owe Creditor any money on the assault and battery claim made by Creditor.

Additionally, Objector-Debtor has provided the court with a copy of Creditor's Proof of Claim, 2-1, filed in this case, including the attachment thereto. Exhibit E; Dckt. 153. While there is not a State Court or Administrative Proceeding final order or judgment, attached to Proof of Claim 2-1 is a detailed explanation of what unpaid wages and penalties are being claimed, complying with Federal Rules of Bankruptcy Procedure Rule 3001. The $68,187.09 claim is stated to be comprised of the following parts:

CLAIM	Amount Earned or Accrued	Less Amount Paid	Balance Due
OVERTIME -- Any work in excess of 8 hours per day, any work in excess of 40 hours per week, and the first 8 hours worked on the seventh consecutive day of work in any workweek must be compensated at the applicable overtime rate of pay. (See Labor Code Section 51 0) From 09/17/2016 through 09/17/2019, plaintiff claims wages earned for overtime hours worked, based on a variable regular rate of pay. See attachment for details.	$29,351.21		$29,351.21
MEAL PERIOD PREMIUM WAGE S -- Employees are entitled to one additional hour of pay at the employee's regular rate of pay for each workday that a meal period is not provided as required by law. (See Labor Code Section 226.7 ; IWC Order 9, Section 11) From 09/17/2016 through 09/J 7/201 9, plaintiff claims meal period premium wages, based on a variable regular rate of pay per hour, for 776 workdays where a meal period was not provided as required by law. See attachment for details.	$5,855.75		$5,855.75
REST PERIOD PREMIUM WAGES -- Employees are entitled to one additional hour of pay at the employee's regular rate of pay for each workday that a rest period is not provided as required by law. (See Labor Code Section 226.7; IWC Order 9, Section 12). From 09/17/2016 through 09/17/2019, plaintiff claims rest period premium wages, based on a variable regular rate of pay per hour, for 776 workdays where a rest period was not provided as required by law. See attachment for details.	$5,855.75		$5,855.75

LIQUIDATED DAMAGES: Failure to Pay Minimum Wages – At least minimum wage must be paid for all hours worked, including any overtime hours worked. An employee is entitled to recover liquidated damages in an amount equal to minimum wages earned but not paid as required by law. (See Labor Code Section 1194.2) From 09/17/2016 through 09/17/2019, plaintiff claims liquidated damages as follows: Minimum wages earned at $12.00 per hour, for a total of 1118.14 hours(s) where at least minimum wage was not paid. Less a total of $0 paid. Liquidated damages equal the balance due.	$13,417.68		$13,417.68
WAITING TIME PENALTIES - If an employer willfully fails to pay, in accordance with Labor Code Section 201, any wages of an employee who is discharged, the wages of the employee continue as a penalty from their due date at the same rate until paid, up to a maximum of 30 days. (See Labor Code Section 203) Plaintiff was discharged on 09/16/2019, on which date wages were due. Plaintiff claims waiting time penalties for 30 days' worth of wages, based on a rate of pay of $205.63 per day. Daily rate of pay is calculated as follows: 8 hours a day at a rate of $17.50 an hour plus 2.5 hours of overtime at a rate of $26.25 an hour.	$6,168.90		$6,168.90
LATE PAYROLL: Penalty - Failure by an employer to pay the wages of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 204.11, 205.5 and 1197.5, entitles the employee to a penalty of one hundred dollars ($100) for any initial violation. Two hundred dollars ($200) for each subsequent violation, or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld. Plaintiff was not paid timely during the period from 09/17/16 to 09/17/2019 and claims 1 as a willful or intentional violation, at $200 each plus 25 percent of 29351.21 payroll totaling for a total of [(1) X 200.00 + .25 X 29351.21]	$7,537.80		$7,537.80
TOTAL CLAIMED			$68,187.09

Objector-Debtor does object that reference is made that for some of these items, "See attached for details." Since there are no attachments to the attachment to Proof of Claim 2-1 Objector-Debtor concludes that the attachment specifying the basis and computation of the Claim is deficient.

However, the court notes that this Attachment is issued by the State of California Department of Labor Relations and is a Notice of Claim and Conference. The Claim is asserted by Creditor and Objector-Debtor is named as the defendant. It would appear that this Notice of Claim and Conference would be something served on Objector-Debtor.

In the Objection, Objector-Debtor does not assert that it has never seen this Notice of Claim and Conference, or state that it has not received the attachments as part of the Notice of Claim and Conference served on it.

What has been presented is that Creditor asserts having a claim for $68,187.09 based upon the above time periods and computation amounts. Debtor has no judgment or order awarding, so what is presented is her statement under penalty of perjury of this being owned.

Interestingly, Objector-Debtor does not dispute owning the obligation, but only asserts that Creditor should be denied pursuing such a claim based upon Objector-Debtor having obtained a Small Claims Judgment on other matters.

If Objector-Debtor disputes that the payment for services alleged to be provided by Creditor did not occur, then in response to Proof of Claim 2-1 Objector-Debtor would introduce evidence of equal probative weight to the *prima facie* validity of the Proof of Claim. However, Objector-Debtor has not done so.

By failing to provide an objection with evidence of at least equal substantive value as Proof of Claim 2-1, Objector-Debtor has not countered it.

While Debtor may believe that Creditor has not proven the claim to Objector-Debtor's satisfaction, the claim amount, the basis of the claim, the method of computation of the claim, and the information necessary for the Objector-Debtor to state, and provide evidence against, a good faith objection to claim.

~~Based on Proof of Claim 2-1, the Attachment thereto stating the basis and computation of the Claim, Objector-Debtor not providing substantive evidence to counter the prima facie evidentiary value of the Claim, and the court determining that Objector-Debtor's assertion that the Small Claims Judgment adjudicated the rights asserted upon with this Claim is based and that Objector-Debtor's assertion that the Doctrine of Collateral Estoppel bars Creditor from seeking to assert this obligation as one owed by Debtor do not have merit, the Objection to the Proof of Claim is overruled.~~

~~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 Objection to Claim of Gina Windorski ("Creditor"), filed in this case by R. Millennium Transport, Inc., Debtor, ("Objector-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number 2 of Creditor is overruled.~~

8.	**20-90349-E-11 DCJ-6 Subchapter V**	**R. MILLENNIUM TRANSPORT, INC. David Johnston**	**OBJECTION TO CLAIM OF JACOB PRICE, CLAIM NUMBER 3 1-27-22 [154]**

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

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 11 Trustee, and Office of the United States Trustee on January 7, 2022. By the court's calculation, 76 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 3 of Jacob Price is overruled.

R. Millennium Transport, Inc. ("Objector-Debtor") requests that the court disallow the claim of Jacob Price ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. Dckt. 154. The Claim is asserted to be unsecured in the amount of $21,889.12. Objector-Debtor asserts that:

1. The Superior Court of California, Stanislaus County, entered a judgment in favor of Objector-Debtor and determined that Objector-Debtor did not owe anything to Creditor.

2. Issue preclusion bars Creditor from asserting a claim against Objector-Debtor.

3. Creditor's Proof of Claim is not supported by any evidence.

Objection Deficiency

1. No Declaration - Failure to Provide Evidence

Objector-Debtor filed their Objection to Allowance of Creditor's Claim with a number of Exhibits but failed to include Objector-Debtor's Declaration in support. Objector-Debtor's counsel should be aware of this requirement:

> Every motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4). LOCAL BANKR. R. 9014-1(d)(3)(D).

2. Judicial Notice

Objector-Debtor requested the court to take judicial notice of Exhibits A through D pursuant to Federal Rules of Evidence 201(b). Dckt. 154 at 4:6-7. Exhibits A through D include the Objector-Debtor's claim in Small Claims Court, the Creditor's counterclaim, a minute order for Objector-Debtor and Creditor's small claim hearing, and the Notice of Entry of Judgment in connection with Objector-Debtor and Creditor's claims/counterclaims. See Dckt. 156. These are not matters in which the court may take judicial notice of. Objector-Debtor's counsel is reminded that Federal Rules of Evidence 201(b) states:

> The court may judicially notice a fact that is not subject to reasonable dispute because it:
>
> (1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Federal Rules of Evidence 201. Objector-Debtor's facts contained in Exhibits A through D are neither generally known within this court's territorial jurisdiction, nor are they from sources whose accuracy cannot reasonably be questioned. As mentioned, Objector-Debtor failed to provide a Declaration in support to authenticate the Exhibits. Without authentication, the court can certainly reasonably question the accuracy and content of the sources found in Exhibits A through D. Therefore, the court declines Objector-Debtor's request to take judicial notice of Objector-Debtor's Exhibits A through D.

At the hearing, Objector-Debtor addressed the substantive defects with their opposition XXXXXXXXXX

Creditor's Opposition

Creditor filed an Opposition on March 10, 2022. See Dckt. 163. In their Opposition, Creditor asserts Claim 3-1 is separate from the underlying small claim case Objector-Debtor is objecting to. *Id.* Creditor references Objector-Debtor's Exhibit A, stating that Creditor's counterclaim was for various medical costs associated with Objector-Debtor's Chief Executive Officer's physical assault of Gina Windorski ("Windorski"). *Id.*

Creditor additionally contends that because Claim 3-1 was not included in their countersuit against Objector-Debtor, *Pitzen v. Superior Court* is not dispositive. *Id.* Creditor finally asserts that Claim 3-1 was originally filed against Objector-Debtor with the Labor Commissioner's Office, but had to be filed again with the Bankruptcy court after Objector-Debtor filed for bankruptcy. *Id.*

Creditor does not address Objector-Debtor's assertion that Creditor's Proof of Claim lacks sufficient supporting evidence. The court notes that Creditor's Exhibit C and Exhibit D detail the specific employment-related claims Creditor has against Objector-Debtor and include the exact balance due in the amount $21,889.12. See Exhibit D, Dckt. 163.

Opposition Deficiencies

1. Pleadings filed as one document

Creditor filed the Opposition and supporting exhibits as one document. The Local Bankruptcy Rules require that the motion, objection, opposition, each declaration, and the exhibits (which may be combined into one indexed document) must be filed as separate pleadings. LOCAL BANKR. R. 9004-2(c). Failure to properly organize pleadings and file them in compliance with the Local Bankruptcy Rules may result in the court not identifying such hidden pleading for consideration.

2. No Proof of Service

Creditor appearing *pro se* did not file a Proof of Service sufficiently demonstrating that Creditor's Opposition and supporting documents were delivered to Objector-Debtor or Objector-Debtor's attorney. Objector-Debtor's attorney, David C. Johnston, is a regularly appearing attorney who receives electronic service of all documents filed within their cases; therefore, the court believes that Objector-Debtor's attorney did receive notice of Creditor's Opposition. However, this does not waive the service requirement for the *pro se* Creditor. Even without counsel, Creditor is still required to file a Proof of Service along with their pleadings and other supporting documents. The Proof of Service should itself be filed as a separate document identifying, by title, each of the documents served and to whom. LOCAL BANKR. R. 9004-2(e).

3. No Declaration - Failure To Provide Evidence

Creditor filed an Opposition making several factual assertions. However, no declaration of the Creditor or other evidence was filed to support those assertions. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D).

At the hearing, Creditor addressing the procedural and substantive defects with their opposition XXXXXXXXXX

APPLICABLE LAW

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and

factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the *prima facie* validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

DISCUSSION

Objector-Debtor asserts that Objector-Debtor sued Creditor and Windorski in the Superior Court of California, Stanislaus County, on April 14, 2020 for $4,600.00 on the basis that Creditor and Windorski, former employees, had embezzled money from Objector-Debtor. Dckt. 154 at 1-2. On September 18, 2020, the Superior Court found in favor of Objector-Debtor and against Creditor and Windorski in the amount $3,500.00 plus costs, and determined that Objector-Debtor did not owe anything to Creditor and Windorski. *Id.* at 2:12-14. Objector-Debtor states that all relevant documents associated with Objector-Debtor's case against Creditor and Windorski can be found in Exhibits A-D, Dckt. 156.

Res Judicata and Collateral Estoppel

The court notes that Objector-Debtor provides the court with no points and authorities, and legal analysis of the Doctrines of Res Judicata and Collateral Estoppel to establish that Creditor's claim is barred based on a judgment in prior litigation. Objector-Debtor does direct the court to the California District Court of Appeal decision Pitzen v. Superior Court, *infra*, but leaves it to the court to analyze that decision, assemble the facts (alleged but not supported by evidence as required by the Federal Rules of Evidence), and then have the court present such analysis for Objector-Debtor.

Reading the Decision in *Pitzen*, this court notes the following language as it relates to not forcing someone sued in small claims court to ramp up the litigation from small claims scope to full blown Superior Court litigation because a "mere" limited dollar amount small claims action is filed.

> *Sanderson* and its progeny all involved a claim that collateral estoppel applied against a small claims defendant who had lost in the small claims court. (*Sanderson, supra*, 17 Cal.2d at p. 565*; Perez, supra*, 27 Cal.3d at pp. 881–882; *Rosse, supra*, 34 Cal.App.4th at p. 1050.) In such a situation, the **Sanderson exception to the usual application of collateral estoppel prevents the unfairness inherent in a plaintiff being allowed to force a defendant into small claims court, obtain a favorable determination on an issue, and then preclude the defendant from relitigating the issue in a subsequent action in superior court, where the potential damages may be much greater.** For example, in *Sanderson*, the plaintiff obtained a judgment in small claims court for $ 12.58 stemming from an automobile accident. (Sanderson, supra, 17 Cal.2d at p. 565.) The plaintiff then sought to use the favorable determination of the defendant's negligence from the small claims proceeding in a subsequent action in the superior court for personal injuries. (*Ibid.*) **The *Sanderson* court held that the defendant could relitigate the issues of his negligence and the plaintiff's contributory negligence in the superior court action.** (*Id.* at p. 573.)
>
> **However, we are aware of no case in which the exception created in *Sanderson*, supra, 17 Cal.2d 563, to the usual application of collateral estoppel has been applied to allow a small claims plaintiff to relitigate an issue decided against him in small claims court.** This dearth of authority in the more than 60 years since *Sanderson* was decided exists for good reason. "'[C]ollateral estoppel is an equitable concept based on fundamental principles

of fairness.' " (*White Motor Corp. v. Teresinski* (1989) 214 Cal. App. 3d 754, 763, quoting *Sandoval v. Superior Court* (1983) 140 Cal. App. 3d 932, 941 [190 Cal. Rptr. 29].) Its application is appropriate only when consistent with public policy. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 829.)

Both fundamental fairness and the public policy embodied in the small claims statutory scheme require that the ***Sanderson*** **exception be limited to issues decided against small claims defendants**. In the context of small claims actions, it is a "general principle that small claims proceedings [are to] be both speedy and final." *(ERA-Trotter Girouard Assoc. v. Superior Court* (1996) 50 Cal.App.4th 1851, 1856.) However, small claims plaintiffs and defendants "do not enter the forum upon equal terms." (*Superior Wheeler Cake Corp., supra,* 203 Cal. at p. 387.) Only **small claims plaintiffs affirmatively choose to litigate in small claims court (§ 116.320, subd. (a)); small claims defendants do not.** In our view, applying the Sanderson exception to allow a plaintiff who lost in small claims court to resurrect his claim in a subsequent action, as in this case, and at the same time preclude the victorious small claims defendant from asserting collateral estoppel, would be fundamentally unfair.

In addition, **refusing to accord collateral estoppel effect to issues decided against defendants is consistent with the policy of fostering "speedy and final" adjudication in small claims matters**. (*ERA-Trotter Girouard Assoc. v. Superior Court, supra*, 50 Cal.App.4th at p. 1856.) A contrary rule would encourage small claims defendants to appeal small claims judgments entered against them, no matter how small, in order to guard against issue preclusion in a subsequent superior court action. However, no such concerns are applicable with regard to small claims plaintiffs, who have already chosen to forfeit their right to appellate review by bringing a small claims action. According collateral estoppel effect to issues decided in defendants' favor is also consistent with the public policy of fostering "speedy and final" resolutions in small claims actions. (*Ibid.*)

In summary, we can perceive of **no rationale for refusing to afford collateral estoppel effect to claims litigated and decided against a small claims plaintiff**. Fundamental fairness dictates that such a plaintiff, having chosen to litigate in an informal setting by bringing an action in small claims court, cannot cite the informality of that forum to gain a second chance to litigate a previously decided issue in a related matter. Allowing a small claims plaintiff to relitigate an issue already decided against him in the forum of his choice is inconsistent with the public policy that "a plaintiff electing to proceed in a small claims court is to be finally bound by an adverse judgment." (*Cook, supra*, 274 Cal. App. 2d at p. 678.)

Pitzen v. Superior Court, 120 Cal. App. 4th 1374 (2004) (emphasis added).

Objector-Debtor further asserts that issue preclusion bars Creditor from asserting a claim against Objector-Debtor, citing *Pitzen v. Superior Court*, 120 Cal.App.4th 1374 (Cal.Ct.App. 2004). Objector-Debtor states that the *Pitzen* court held that when a small claims plaintiff loses their case, they are barred from bringing a subsequent proceeding. Dckt. 154 at 2:20-24. Objector-Debtor references California Code of Civil Procedure § 116.390(a), which permits "a defendant whose counter-claim exceeds the jurisdiction of the small claims division to commence an action in a court of competent jurisdiction and then request a transfer of the plaintiff's small claims action." *Id.* at 3:1-4. Objector-Debtor states that in filing a

"Defendant's Claim", Creditor and Windorski waived any recovery in excess of $10,000.00 and became subject to issue preclusion if they lost, which they did. *Id.* at 3:4-6.

As one can see, Objector-Debtor's argument is directly contrary to the plain language of the California Court of Appeal Decision in Pitzen which Objector-Debtor cites as its legal authority for the Objection based on Collateral Estoppel.

In *Pitzen*, the parties in interest were involved in a motor vehicle collision and the small claims plaintiffs each separately sued the defendant in small claims court, both claiming that the defendant caused the accident. 120 Cal.App.4th 1374, 1377 (Cal.Ct.App. 2004). The cases were eventually consolidated, and the small claims court found that the plaintiffs failed to meet their burden of proving that the defendant caused the accident. *Id.* One of the plaintiffs later filed another action against both the defendant and the other plaintiff, *based on the same accident that was the subject of the small claims action*. *Id.* The other plaintiff filed a cross-complaint against the defendant, and the defendant responded by filing a motion to dismiss the cross-complaint, contending that the claims were barred by the judgment in the original small claims action. *Id.* While the court overruled the motion to dismiss, it granted the defendant's later petition for a writ of mandate, holding that the cross-complaint against the defendant was barred by collateral estoppel, or issue preclusion, as it was *based on the same accident that was the subject of the small claims action*. *Id.* at 1378.

Specifically, *Pitzen* states: "A plaintiff's relitigation, in a subsequent related action, of an issue expressly decided against the plaintiff in a small claims action is precluded, where the record is *sufficiently clear as to the issue actually litigated and decided in the small claims court*." *Id.* at 1377 (emphasis added).

Assertion that California Code of Civil Procedure § 116.390(a)
Results in Collateral Estoppel of Claim

In the Motion Objector-Debtor assert that the California Code of Civil Procedure allows a defendant in a small claims action to states that:

> When Windorski and Price case filed their "Defendant's Claim" they became treated procedurally and substantively to the same extent as if they had been plaintiffs. California Code of Civil Procedure § 116.390(a) allows a defendant whose counter-claim exceeds the jurisdiction of the small claims division to commence an action in a court of competent jurisdiction and then request a transfer of the plaintiff's small claims action. By Windorski and Price filing their "Defendant's Claim" they both waived any recovery in excess of $10,000.00 and became subject to issue preclusion if they lost, which they did.

Motion, p. 2:26, 3:1-6; dckt. 154. California Code of Civil Procedure § 116.390(a) provides:

> § 116.390. Transfer of action when defendant's claim exceeds jurisdictional limit
>
> (a) **If a defendant has a claim against a plaintiff** that exceeds the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and the **claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim**, the **defendant may** commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

As one can see from the plain language of this statute, a defendant may, but is not required to commence a separate action for defendant's claim that relates to the same contract, transaction, matter, or event which is the subject of the small claims plaintiff's action.

Additionally, Creditor's claim in this Bankruptcy Case is for $21,889.12 and is stated to be for "Unpaid Wages and Penalties." Proof of Claim 3-1, ¶¶ 7, 8. In Objector-Debtor's small claims action, the claim asserted by Debtor Objection is stated by Defendant-Objection to be:

(3) The plaintiff claims the defendant owes $ $4,600.00. (Explain below):

a. Why does the defendant owe the plaintiff money?

The defendants owe me this money because Gina was my book keeper and Jacob was her fiancé who both worked for me and embezzled this money via cashed checked by Jacob.

When did this happen? (Date): 1/17/2019

Exhibit A, Plaintiff's Claim and Order to Go to Small Claims Court, p. 2, § 3; Dckt. 156. For Objector-Debtor the small claims action, "the contract, transaction, matter, or event which is the subject of the [Objector-Debtor's]" is a "simple" embezzlement, nothing more. It does not seek a determination of wages owed. By the plain language of California Code of Civil Procedure § 116.390(a), Creditor could not use the permissive ability to commence an action in Superior Court and yank Objector-Debtor out of the simple, contained, limited Small Claims Court proceedings.

Objector-Debtor also argues that since Creditor filed a Defendant's Claim in the Small Claims Action, then any and all rights to asserted wages have been determined in favor of Objector-Debtor. A copy of the Creditor's Claim filed by Creditor is provided by Debtor Objector as Exhibit B, Dckt. 156, and the claim stated by Creditor in the Small Claims Court claim is:

(3) The Defendant claims the Plaintiff owes $ 7,500.00 (Explain below):

a. Why does the Plaintiff owe the Defendant money?

b. When did this happen? (Date): September 24, 2019

If no specific date, give the time period: Date started:_____ Through:_____

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.)
$150 Emergency Room Fee, $30 for Medications, $7,320 for Pain & Suffering for physical assault

Creditor chose to commence a Small Claims action against Objector-Debtor, asserting which on its

face is an assault and battery claim, not a claim for wages.

In the Small Claims Entry of Judgment; Exhibit D, Dckt. 156; it states that a judgment was entered on September 18, 2020 (no copy of the actual Small Claims Judgment has been provided by Objector-Debtor):

A. For Objector-Debtor in the amount of $3,500.00 against Creditor, which is on the claim of embezzlement.

B. Against Creditor and for Objector-Debtor, stating that Objector-Debtor does not owe Creditor any money on the assault and battery claim made by Creditor.

Additionally, Objector-Debtor has provided the court with a copy of Creditor's Proof of Claim, 3-1, filed in this case, including the attachment thereto. Exhibit E; Dckt. 156. While there is not a State Court or Administrative Proceeding final order or judgment, attached to Proof of Claim 3-1 is a detailed explanation of what unpaid wages and penalties are being claimed, complying with Federal Rules of Bankruptcy Procedure Rule 3001. The $21,889.12 claim is stated to be comprised of the following parts:

CLAIM	Amount Earned or Accrued	Less Amount Paid	Balance Due
OVERTIME -- Any work in excess of 8 hours per day, any work in excess of 40 hours per week, and the first 8 hours worked on the seventh consecutive day of work in any workweek must be compensated at the applicable overtime rate of pay. (See Labor Code Section 51 0) Plaintiff claims wages earned for overtime worked, based on a regular rate of pay of $15.000 per hour as follows: From 09/17/2016 through 09/17/2019, plaintiff claims wages earned for overtime hours worked, based on a variable regular rate of pay. See attachment for details.	$7,258.13		$7,258.13
MEAL PERIOD PREMIUM WAGE S -- Employees are entitled to one additional hour of pay at the employee's regular rate of pay for each workday that a meal period is not provided as required by law. (See Labor Code Section 226.7 ; IWC Order 9, Section 11) From 08/06/2018 through 09/17/201 9, plaintiff claims meal period premium wages, based on a variable regular rate of pay per hour, for 282 workdays where a meal period was not provided as required by law. See attachment for details.	$1,729.00		$1,729.00

REST PERIOD PREMIUM WAGES -- Employees are entitled to one additional hour of pay at the employee's regular rate of pay for each workday that a rest period is not provided as required by law. (See Labor Code Section 226.7; IWC Order 9, Section 12). From 08/06/2018 through 09/17/2019, plaintiff claims rest period premium wages, based on a variable regular rate of pay per hour, for 282 workdays where a rest period was not provided as required by law. See attachment for details.	$1,729.00		$1,729.00
LIQUIDATED DAMAGES: Failure to Pay Minimum Wages – At least minimum wage must be paid for all hours worked, including any overtime hours worked. An employee is entitled to recover liquidated damages in an amount equal to minimum wages earned but not paid as required by law. (See Labor Code Section 1194.2) From 009/06/2018 through 09/17/2019, plaintiff claims liquidated damages as follows: Minimum wages earned at $12.00 per hour, for a total of 322.58 hours(s) where at least minimum wage was not paid. Less a total of $0 paid. Liquidated damages equal the balance due.	$3,870.96		$3,870.96
WAITING TIME PENALTIES - If an employer willfully fails to pay, in accordance with Labor Code Section 201, any wages of an employee who is discharged, the wages of the employee continue as a penalty from their due date at the same rate until paid, up to a maximum of 30 days. (See Labor Code Section 203) Plaintiff was discharged on 09/16/2019, on which date wages were due. Plaintiff claims waiting time penalties for 30 days' worth of wages, based on a rate of pay of $176.25 per day. Daily rate of pay is calculated as follows: 8 hours a day at a rate of $15.00 an hour plus 2.5 hours of overtime at a rate of $22.50 an hour.	$5,287.50		$5,287.50
LATE PAYROLL: Penalty - Failure by an employer to pay the wages of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 204.11, 205.5 and 1197.5, entitles the employee to a penalty of one hundred dollars ($100) for any initial violation. Two hundred dollars ($200) for each subsequent violation, or any willful or intentional violation, plus 25 percent of the amount unlawfully withheld. Plaintiff was not paid timely during the period from 08/06/18 to 09/17/2019 and claims 1 as a willful or intentional violation, at $200 each plus 25 percent of 7258.13 payroll totaling for a total of [(1) X 200.00 + .25 X 7258.13]	$2,014.53		$2,014.53
TOTAL CLAIMED			$21,889.12

Objector-Debtor does object that reference is made that for some of these items, "See attached for details." Since there are no attachments to the attachment to Proof of Claim 2-1 Objector-Debtor concludes that the attachment specifying the basis and computation of the Claim is deficient.

However, the court notes that this Attachment is issued by the State of California Department of

Labor Relations and is a Notice of Claim and Conference. The Claim is asserted by Creditor and Objector-Debtor is named as the defendant. It would appear that this Notice of Claim and Conference would be something served on Objector-Debtor.

In the Objection, Objector-Debtor does not assert that it has never seen this Notice of Claim and Conference, or state that it has not received the attachments as part of the Notice of Claim and Conference served on it.

What has been presented is that Creditor asserts having a claim for $21,889.12 based upon the above time periods and computation amounts. Debtor has no judgment or order awarding, so what is presented is her statement under penalty of perjury of this being owned.

Interestingly, Objector-Debtor does not dispute owning the obligation, but only asserts that Creditor should be denied pursuing such a claim based upon Objector-Debtor having obtained a Small Claims Judgment on other matters.

If Objector-Debtor disputes that the payment for services alleged to be provided by Creditor did not occur, then in response to Proof of Claim 3-1 Objector-Debtor would introduce evidence of equal probative weight to the *prima facie* validity of the Proof of Claim. However, Objector-Debtor has not done so.

By failing to provide an objection with evidence of at least equal substantive value as Proof of Claim 3-1, Objector-Debtor has not countered it.

While Debtor may believe that Creditor has not proven the claim to Objector-Debtor's satisfaction, the claim amount, the basis of the claim, the method of computation of the claim, and the information necessary for the Objector-Debtor to state, and provide evidence against, a good faith objection to claim.

~~Based on Proof of Claim 3-1, the Attachment thereto stating the basis and computation of the Claim, Objector-Debtor not providing substantive evidence to counter the prima facie evidentiary value of the Claim, and the court determining that Objector-Debtor's assertion that the Small Claims Judgment adjudicated the rights asserted upon with this Claim is based and that Objector-Debtor's assertion that the Doctrine of Collateral Estoppel bars Creditor from seeking to assert this obligation as one owed by Debtor do not have merit, the Objection to the Proof of Claim is overruled.~~

~~The Objection to the Proof of Claim is overruled without prejudice.~~

~~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 Objection to Claim of Jacob Price ("Creditor"), filed in this case by R. Millennium Transport, Inc., Debtor, ("Objector-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number 3-1 of Creditor is overruled.~~

9. **19-90382-E-7** **TRACY SMITH** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
19-9012 **7-26-19 [1]**
CAE-1
ALVAREZ V. SMITH ET AL

Plaintiff's Atty: Shane Reich
Defendant's Atty:
Peter G. Macaluso [Tracy Emery Smith]
Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19
Answer: None

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Dischargeability - fraud as fiduciary, embezzlement, larceny
Recovery of money/property - other

Notes:
Continued from 2/17/22. The court ordered the Parties and their counsel to appear in person at the continued hearing, and all further hearings unless relief is granted pursuant to a future order of the court.

The Status Conference is xxxxxxx

MARCH 24, 2022 STATUS CONFERENCE

On March 23, 2022, twenty-four hours before this Status Conference, Judgment Debtor Tracy Smith filed his Third Post-Judgment Status Conference Statement. Dckt. 77. He state that Plaintiff Judgment Creditor and Judgment Debtor have met to discuss the transfer of a comparable home Judgment Debtor requests that the Status Conference be continued "until the completion of the location to which the Defendant can delivered the required home." Apparently, the court is to delay the enforcement of it's judgment for however long the Judgment Debtor believes it would take him to comply with this court's Judgment and mandatory injunction.

At the Status Conference, **xxxxxxx**

FEBRUARY 17, 2022 STATUS CONFERENCE

On February 7, 2022, Judgment Debtor Tracy Smith, filed his Second Post Judgment Status Conference Statement. In it he states that the Judgment has been entered in this Adversary Proceeding, and requests that the file now be closed.

The Judgment in this Adversary Proceeding is a monetary one for $19,000.00, and also a Mandatory Injunction for Judgment Debtor to turn over a Mobile Home. The Status Report does not state that Judgment Debtor has turned over the property as ordered by this court. The Judgment provides for alternative relief in the form of a $93,643.84 if the specific performance required by the Mandatory Injunction is not or can not be done.

Finally, the Judgement determines that the monetary amounts are nondischargeable.

At the Status Conference, Judgment Creditor reported that Defendant Judgement Debtor has not provided information about the asset. Counsel for Defendant Judgment Debtor did not know whether his client has complied with the court's mandatory injunction, which is now almost two years old, to turn over the mobile home to Judgment Creditor Plaintiff. Counsel for Judgment Creditor Plaintiff could not cite to the court any efforts made to enforce the mandatory injunction in light of Judgment Debtor Defendant's failure to comply with the injunction.

The court continued the Status Conference and ordered the parties and their counsel to appear in person at the continued hearing, and all further hearings unless relief is granted pursuant to a future order of the court, at the Status Conference and all further hearings, conference, and proceedings in this Adversary Proceeding.

10. 20-24123-E-11 RUSSELL LESTER
22-2016 FWP-1
LESTER V. FIRST AMERICAN TITLE COMPANY ET AL

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
3-22-22 [7]

The Motion for Temporary Restraining Order is xxxxxxx

MARCH 24, 2022 HEARING

On March 21, 2022, Russell Lester, the Reorganizing Debtor under his confirmed Chapter 11 Plan ("Plaintiff-Debtor") filed a Complaint naming First American Title Company and Russ Lester, LLC as defendants. Dckt. 1. The Complaint seeks a judgment for a preliminary injunction. Id.; First Claim for Relief. No other relief is sought in the Complaint. On March 22, 2022, Plaintiff-Debtor filed a Motion for Issuance of Temporary Restraining Order and Preliminary Injunction. Dckt. 7. The grounds stated with particularity in the Motion (Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007) state the grounds for the Motion "are more fully set forth in the complaint. . . ." Id., ¶ 4. The Motion also states that there are ambiguities in the confirmed Plan, that Plaintiff-Debtor has been delayed in obtaining a conservation easement due to governmental review, and that the Plan appears to cause the Plaintiff-Debtor to automatically lose real property if the conservation easement is not completed by March 31, 2022. Id., ¶¶ 5b-5e. The Plaintiff-Debtor has also requested the court conduct a Status Conference in the related Bankruptcy Case, which the court has set and will conduct at 10:30 a.m. on March 24, 2022 (specially set to the Modesto Division Courthouse - Telephonic Appearances Permitted).

The entry of a temporary restraining order was requested on an *ex parte* basis. The court having set the Status Conference for March 24, 2022, and knowing that Movant's counsel and most major "players" in the Bankruptcy Case would be in attendance, the court set this request for a hearing on March 24, 2022, as well.

At the hearing, **xxxxxxx**

11. **20-24123-E-11 FWP-36** **RUSSELL LESTER** **SCHEDULING CONFERENCE RE: VOLUNTARY PETITION 8-27-20 [1]**

The Status Conference is xxxxxxx

On March 22, 2022, Russell Lester, the Reorganized Debtor under the confirmed Chapter 11 Plan requested that the court set a Scheduling Conference in this case for possible emergency motions that Mr. Lester anticipated having to file. These motions would relate to a delay in performing the Plan, which Mr. Lester asserts is being cause by an unanticipated length of time for governmental review of the granting of a conservation easement. Additionally, Mr. Lester believes that there may be an ambiguity in the confirmed Chapter 11 Plan.

At the Scheduling Conference, xxxxxxx

FINAL RULINGS

12. **21-90590-E-7** **ERIKA RODRIGUEZ** **MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC**
ARK-1 **Stephen Costello** **2-24-22 [17]**

Final Ruling: No appearance at the March 24, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on February 22, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of the debtor, Erika Carolina Rodriguez ("Debtor") commonly known as 819 Kerr Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $8,317.42. Exhibit B, Dckt. 19. An abstract of judgment was recorded with Stanislaus County on May 30, 2019, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $268,100.00 as of the petition date. Schedule A/B, Dckt. 1. The unavoidable consensual liens that total $134,841.43 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D, Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of

$169,969.09 on Schedule C. Schedule C, Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Midland Funding, LLC, California Superior Court for Stanislaus County Case No. CV18002658, recorded on May 30, 2019, Document No. DOC-2019-0034162-00, with the Stanislaus County Recorder, against the real property commonly known as 819 Kerr Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. **21-90510-E-7** **SEAN/MELISSA CHILDRESS** **MOTION BY LORIS L. BAKKEN TO**
BLF-5 **Simran Hundal** **WITHDRAW AS ATTORNEY**
3-9-22 [49]

Final Ruling: No appearance at the March 24, 2022 Hearing is required.

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Withdraw as Attorney 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.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Withdraw as Attorney is granted.

Loris L. Bakken ("Movant"), counsel of record for Gary Farrar ("Chapter 7 Trustee"), filed a Motion to Withdraw as Attorney as Trustee's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e).

B. Movant has completed the legal work necessary, Movant has accepted employment with a government agency, and Trustee has agreed to represent themself.

Motion, Dckt. 49.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject

to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

(5) The client knowingly and freely assents to termination of the employment.

CAL. R. PROF'L. CONDUCT 1.16(b)(6).

DISCUSSION

As grounds for the Motion to Withdraw as Attorney, Movant states in her declaration:

1. Movant has completed the legal work necessary in this case and filed her final fee application, which the court granted on February 20, 2022.

2. All legal work is complete and the case will be in a position to close as soon as Mr. Farrar receives the March and April payments from Debtor pursuant to the sale agreement.

3. Movant accepted employment with a government agency and must withdraw as counsel of record. Trustee has elected to represent himself in *propria persona* rather than substitute in new counsel.

4. Movant has filed a Substitution of Attorney. Dckt. 48.

Declaration, Dckt. 52.

The court finds under the circumstances, Debtors will not be unduly prejudiced or delayed. This Motion is granted.

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

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

The Motion to Withdraw as Attorney filed by Loris L. Bakken ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Gary Farrar ("Chapter 7 Trustee"), with Trustee Gary Farrar representing himself in *pro se*.

14. 20-90435-E-7 CHARLES MACAWILE **MOTION FOR COMPENSATION FOR**
HCS-7 David Johnston **RE/MAX, REALTOR(S)**
2-15-22 [217]

Final Ruling: No appearance at the March 24, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2022. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("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 November 10, 2021. The order of the court approving employment of Applicant was entered on November 4, 2021. Dckt. 202. Applicant requests fees in the amount of $220.00 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 assisting the Trustee in determining the basis, for tax purposes, of the real property at 5412 Kiernan Avenue, Salida, California. Applicant also assisted the Trustee in determining the tax basis fo the real property located at 4942 Toomes Road, Salida, California in case the Trustee had to sell that property. Applicant spent two hours meeting with the Trustee and using several software programs to unravel the transactions and multi-ownership names and transfers pertaining to the properties. The Estate has $1,130,045.00 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 2 hours in this category. Applicant met with the Trustee and used several different software programs to unravel past debtor transactions and multi ownership names and transfers pertaining to 5412 Kiernan Avenue, Salida, California and 4942 Toomes Road, Salida, California.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Bob Brazeal	2	$110.00	$220.00
Total Fees for Period of Application			$220.00

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 $220.00 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

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

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

Fees	$220.00
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 Bob Brazeal ("Applicant"), Real Estate Broker 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 Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:

Bob Brazeal, Professional employed by the Chapter 7 Trustee

Fees in the amount of $220.00
Expenses in the amount of $0.00,

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

15. 21-90484-E-11 TWISTED OAK WINERY, LLC

CAE-1

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 10-4-21 [1]

Final Ruling: No appearance at the March 24, 2022 Status Conference is required.

Debtor's Atty: Brian S. Haddix
Notes:
Continued from 1/27/22
Operating Report Filed: 2/42/22
Third Amended Plan of Reorganization for Small Business Under Chapter 11 filed 2/28/22 [Dckt 72]

The Status Conference is continued to 2:00 p.m. on April 21, 2022, to be conducted in conjunction with the continued hearing on confirmation of the proposed Subchapter V Plan.

MARCH 24, 2022 STATUS CONFERENCE

The court has issued an order resetting the Confirmation Hearing Date to April 21, 2022, the Debtor/Debtor in Possession having amended the plan. Order, Dckt. 73. The court continues the Status Conference to the time and date of the continued confirmation hearing.

JANUARY 27, 2022 STATUS CONFERENCE

The court has issued an Amended Order (Dckt. 61), the amendment necessary in light of counsel for the Debtor/Debtor in Possession noting a typographical error concerning a date, setting the confirmation hearing in the Subchapter V case for March 24, 2022.

No status reports or other pleadings have been filed indicating any issues to be addressed at the January 2022 Status Conference. The court continues the Status Conference to 2:00 p.m. on March 24, 2022, to be conducted in conjunction with the Confirmation Hearing.

DECEMBER 2, 2021 STATUS CONFERENCE

On November 18, 2021, Twisted Oak Winery, LLC, the Debtor/Debtor in Possession, filed a Status Report. Dckt. 39. The information reported includes the following. The Debtor/Debtor in Possession is current on lease payment, the SBA insured loan, payroll, and tax obligations. The Debtor/Debtor in Possession foresees the Plan in this case providing for a 100% dividend for creditors holding general unsecured claims. It is projected that the Chapter 11 Plan will be filed by January 4, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that an agreement

has achieved a cash collateral stipulation. There will be amendments to the Schedules, which do not impact the plan.

Counsel for the U.S. Trustee believes that in the past that the principal's credit card was used for business expenses and need to be continued.

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 Status Conference having been scheduled by the court, the confirmation hearing having been continued, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on April 21, 2022**, to be conducted in conjunction with the continued hearing on confirmation of the proposed Subchapter V Plan.