UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 25, 2021 at 10:30 a.m.

1.	**21-90071-E-7** **DCJ-1**	**MARK LANGLEY AND KERI ARNOLD-LANGLEY** **David Johnston**	**MOTION TO EXTEND AUTOMATIC STAY** **3-11-21 [14]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2021. By the court's calculation, 14 days' notice was provided. The court set the hearing for March 25, 2021. Dckt. 17.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Mark Langley and Keri Arnold-Langley ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-90992) was dismissed

on June 18, 2020, after Debtor realized that the appreciation in value of their home would substantially raise the payments to the Chapter 13 trustee, which they could not afford. *See* Order, Bankr. E.D. Cal. No. 19-90992, Dckt. 53, June 18, 2020. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because the Debtor's home had appreciated in value to such a great extent that they would not be able to pay the Chapter 13 Trustee. Declaration, Dckt. 16. Debtor further explains the Debtor had made every payment under the plan for the previous case, appeared at the 341 meeting, and has always been current on their home loan. *Id.*

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Mark Langley and Keri Arnold-Langley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. 20-24123-E-11 FWP-14 2 thru 6 | **RUSSELL LESTER Thomas Willoughby** | **CONTINUED APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT 12-17-20 [307]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Notice of the Hearing were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion to Approve Disclosure Statement is continued to 2:00 p.m. on April 8, 2021.

Request for Continuance and Interim Extension of Exclusive Period

On March 16, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to April 8, 2021. Dckt. 453. The parties inform the court that the additional time would allow for further negotiations to settle disputes related to Debtor's Plan and keep professional fees in this case to a minimum to maximize the return to creditors.

The parties have also agreed to extend the deadline for the Debtor in Possession to file and serve proposed amendments to the Plan of Reorganization and Disclosure Statement from March 16, 2021 to March 25, 2021. *Id.*

Request for Continuance

On March 16, 2021, the Parties filed a Stipulation to further extend the hearing on this matter in light of the ongoing mediation. Dckt. 453. The Court grants the request.

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 Approval of Disclosure Statement filed by Russell Lester, the Debtor in Possession, having been presented to the court, the Debtor in Possession, Prudential Insurance Company of America, and First Northern Bank of Dixon having filed a Motion to Continue the March 25, 2021 hearing, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Disclosure Statement is continued to 2:00 p.m. on April 8, 2021 (Specially set date and time to the court's Modesto Division Calendar).

3. 20-24123-E-11 FWP-17 RUSSELL LESTER Thomas Willoughby CONTINUED MOTION FOR EXTENSION OF EXCLUSIVE PERIOD 1-21-21 [351]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend Exclusivity is xxxxx.

Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession ("Debtor in Possession," "DIP"), moves to extend the exclusive period of time for the Debtor in Possession to solicit acceptances of and confirm a Chapter 11 plan of reorganization on the basis that cause exists to grant such an extension based on the particular circumstances encountered by Debtor in Possession.

The current deadline for the Debtor in Possession to confirm a plan prior to expiration of the exclusivity period as provided in 11 U.S.C. § 1121(c) is February 23, 2021. The Motion requests that the exclusive period of time for soliciting acceptances and confirm a plan be extended to March 31, 2021.

First Northern Bank Opposition

Creditor First Northern Bank ("FNB") opposes the extension on the same basis that it supports creditor Prudential's Motion to Terminate Exclusivity. Dckt. 447. FNB has responded at length to Prudential's motion, and incorporates by reference its Response to Prudential's motion. Further discussion of FNB's Opposition is contained below.

APPLICABLE LAW

> Section 1121(d)(1) of the Bankruptcy Code provides:
>
> Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and © of this section and after notice and a hearing, the Court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1). Bankruptcy Code section 1121(d)(2) provides that any such extension cannot extend beyond 18 months after the petition date for the 120-day period and 20 months after the petition date for the 180-day period. See 11 U.S.C. § 1121(d)(2).

DISCUSSION

Subsection 1121(d) provides that upon the request of a party in interest made within the 120-day period for filing a plan or within the extended 180-day period, if a plan is filed, the court "for cause," after notice and a hearing, may reduce or increase the 120-day period or the 180-day period. Courts have disagreed on the question of whether the extension of the 120-day time period for filing a chapter 11 plan automatically extends the 180-day period for securing acceptances of the plan. *Compare In re Judd*, 173 B.R. 941, 943 (Bankr. D. Kan. 1994) (automatically extending period for obtaining acceptances), with *In re Ravenna Indus., Inc.*, 6 C.B.C.2d 1015, 20 B.R. 886, 891 (Bankr. N.D. Ohio 1982) (same), and *In re Trainer's, Inc.*, 5 C.B.C.2d 1623, 17 B.R. 246, 248 (Bankr. E.D. Pa. 1982). *See also In re Hermanos Torres Perez, Inc.*, 63 C.B.C.2d 1448, 491 B.R. 316 (Bankr. D.P.R. 2010) (reviewing relevant legislative history and finding that the 180-day exclusivity period is not automatically extended).

Any request for extension of the 120-day or 180-day period must be made before those periods have expired. *See In re Perkins*, 71 B.R. 294, 297 (W.D. Tenn. 1987); *In re Cramer, Inc.*, 105 B.R. 433 (Bankr. W.D. Tenn. 1989); *In re Century Inv. Fund VII Ltd. P'ship*, 96 B.R. 884, 892 (Bankr. E.D. Wis. 1989). The party seeking the change in the statutory time bears the burden of establishing that cause exists. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 409 (E.D.N.Y. 1989); *In re Washington-St. Tammany Elec. Co-op., Inc.*, 97 B.R. 852, 854 (E.D. La. 1989); *In re Newark Airport/Hotel Ltd. P'ship*, 155 B.R. 93, 101 (Bankr. D.N.J. 1993).

The determination of whether cause exists to warrant an extension or reduction of the statutory time periods is fact specific. 7 Collier on Bankruptcy P 1121.06 (16th 2020). Several courts have enumerated the following factors (also known as the "Downing Factors") to be considered in determining whether cause exists to warrant an extension:

> (1) the size and complexity of the case;
> (2) the necessity of sufficient time to negotiate and prepare adequate information;
> (3) the existence of good faith progress toward reorganization;
> (4) whether the debtor is paying its debts as they come due;
> (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
> (6) whether the debtor has made progress in negotiating with creditors;
> (7) the length of time the case has been pending;
> (8) whether the debtor is seeking the extension to pressure creditors; and
> (9) whether unresolved contingencies exist.

See In re GMG Capital Partners III, L.P., 503 B.R. 596 (Bankr. S.D.N.Y. 2014); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Adelphia Communications Corp.*, 352 B.R. 578, 587–90 (Bankr. S.D.N.Y. 2006) (conducting a detailed review of each of the nine factors as applied to the facts of the case and granted an extension); *In re Express One Int'l, Inc.*, 35 C.B.C.2d 1045, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (finding cause to extend the exclusive period where the debtor had been diligent in its attempts to reorganize and extension was not sought for an indefinite period).

Here, Debtor in Possession argues that cause exists to grant the extension because the factors have, as a whole, been met. Debtor in Possession asserts diligently working towards confirmation of a plan and has had extensive settlement negotiations with Prudential and FNB and has made significant progress towards addressing the secured lenders' objections. Further, Debtor in Possession argues that this case is of the size and complexity that favors extension where DIP's principal business enterprise is farming and organic walnut processing, and the estate includes multiple real estate properties valued at over $57,388,421.00 and a total debt of at least $26,909,018.19. Moreover, Debtor in Possession has diligently engaged in providing creditors with documents and information regarding the farming operation, the assets, financial and potential tax issues to obtain input from the secured lenders to maximize the distributions to creditors and minimize the costs of administration.

Additionally, Debtor in Possession is concerned that if Creditor Prudential is allowed to propose a plan, such a plan may negatively affect the substantial efforts Debtor in Possession has made and opposing such a plan would be at the expense of the creditors, reduce the distributions to their classes, and cause delay.

Lastly, Debtor in Possession asserts the extension is needed so that Debtor in Possession may be allowed to reach a resolution that satisfies First Northern Bank of Dixon and Prudential's requests.

Debtor in Possession states creditors will not be harmed if the exclusive period is extended as Debtor in Possession has been paying all post-petition debts as they come due.

Requests for Continuance
and Interim Extension of Exclusive Period

Debtor filed a status report on February 2, 2021, Dckt. 383, stating Creditors Prudential and FNB, and Debtor agreed to meet for mediation on February 9 or 10, 2021. On February 3, 2021, the parties filed a Stipulation informing the court and stipulating to continue the hearings on this Motion and Creditor Prudential's Motion to Terminate Exclusivity to February 23, 2021. Dckt. 386. On the Status Report he parties informed the court agreed to mediation set for February 9 or 10, 2021. Dckt. 386.

On February 18, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to a date to be determined at the February 23, 2021 hearing. Dckt. 415. The parties informed the court that they have agreed to vacate the briefing schedule for all the hearings scheduled in this case related to the Motion to Use Cash Collateral (FWP-2), the Motion for Extension of Exclusive Period (FWP-17), the Motion to Terminate Exclusivity (NRM-1), and the Approval of the Disclosure Statement (FWP-14).

The parties have also agreed to an interim cash collateral order authorizing use of cash collateral in the amounts and for the purposes as stated in the present cash collateral budget attached as Exhibit A to this court's Fifth Interim Order on the Motion (Docket No. 306), through the week of a subsequent hearing

date to be determined by the court provided that such subsequent hearing date is within thirty (30) days of the February 23 Hearing on cash collateral. *Id.*

The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

Debtor filed a second status report on February 22, 2021, Dckt. 420, stating Debtor and Creditors Prudential and FNB had agreed to specially set a date of March 25, 2021 for hearing all the matters on the February 23, 2021 Calendar.

February 23, 2021 Hearing

At the hearing, the period of exclusivity was extended through March 25, 2021.

March Status Report

A third status report filed by Debtor on March 11, 2021, stating that a mediation did occur on February 10, 2021, and that a second mediation, which included Prudential but not FNB, occurred on March 9, 2021. Dckt. 440. That mediation session concerned discussions of the Prudential treatment of the plan. *Id*. at 2:14.

Creditor's Opposition

Creditor FNB incorporates their support of Creditor Prudential's Motion to Terminate Exclusivity as opposition to Debtor's Motion to Extend Exclusivity. Opposition, Dckt. 447; *see* Dckt. 450. FNB argues that Debtor's plan is not feasible, the assets valuations are unrealistic, and Debtor has demonstrated an unwillingness or inability to sell even one property – the Gordon Ranch – which has been listed for sale since March 21, 2020. *Id*. Debtor's business has been and continues to be unprofitable, and Debtor continues to focus on operations over his fiduciary duties to creditors. *Id*.

Creditor also notes that Debtor in Possession's motion only sought extension of the exclusivity period from February 23, 2021, to March 31, 2021. Thus, Debtor in Possession's Motion has been effectively granted until at least the instant continued hearing on the motion, March, 25, 2021, since no competing plan has been filed in this case that impairs Debtor in Possession's exclusivity. *Id*. at ¶ 3. By Debtor in Possession indirectly obtaining the relief sought, creditors have been prevented from filing competing plans, without accomplishing a successful solicitation of votes within the 180-day period. *Id*.

At the hearing, xxxxxxxx

DECISION

The instant Motion was filed on January 21, 2021, before the deadline for the Debtor in Possession to confirm a plan prior to expiration of the exclusivity period as provided in 11 U.S.C. § 1121(c).

Creditor FNB notes that while the Debtor in Possession has now been in bankruptcy for seven months, a resolution with Creditor FNB and Creditor Prudential have not developed. Creditor FNB notes that for Creditor Prudential, its claims based on notes with 4% and 5% interest rate are now earning Creditor Prudential an 18% default rate of interest. For Creditor FNB, for its default note rates are only around 10%.

Though interest is accruing, Creditor FNB argues that Debtor in Possession is not currently paying such interest.

The Operating Report for February 2021 (timely filed on March 16, 2021, Dckt. 445) provides some financial information. The Debtor in Possession reports that during the six month period through February 2021, the Estate had total cash receipts of $1,474,516. MOR, p. 4; Dckt. 445. It reports expenses of ($935,291). *Id*. Looking at the expenditures, it does not appear that there are any monies (other than some minor amounts) being used for Debtor's living expenses. Possibly the non-debtor's spouse's (presumably community property) income of $8,647 a month is being used to pay the reasonable and necessary living expenses for Debtor. Schedule I; Dckt. 111 at 93-94. Debtor confirms on Schedule I that he has no income.

The financial plan put forward in the Chapter 11 Plan filed by the Debtor in Possession (Dckt. 309) is to be accomplished by setting up a Special Purpose Entity ("SPE") to be owned by the Lester Family Trust to take over some assets of the estate. A triple net farming agreement between the Debtor and the SPE for Debtor to continue farming will be established. The Debtor will provide funding to the SPE so that the SPE can have funds to pay the obligations secured by the properties transferred into the SPE. The Debtor will be the manager of the SPE, with full power to manage and operate the SPE. Debtor may be compensated up to $120,000 a year, generated from his own farming funds, for managing the SPE.

For the Creditor Prudential claims, the Debtor and non-debtor spouse shall be released from any personal liability and the SPE will assume those obligations. The interest rate will be reduced to 4.03%, certain principal payments eliminated, and principal payments to recommenced after the Post-Effective Sale Date Period, with all of the obligations coming due in full January 1, 2029.

For Creditor FNB, for its "general loans" its interest rate will be 4.00%, compounded monthly, with a balloon payment due January 1, 2029. For the HELOC Loan, the monthly compounded interest rate will be 4.25%. For the AG Production Loan, the monthly compounded interest rate will be 6%, and it will be replaced by a New Lester Family Trust Loan.

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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 Extension of Exclusive Period filed by Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxx**.

4. **20-24123-E-11 FWP-2** | **RUSSELL LESTER** **Thomas Willoughby** | **FINAL HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR MOTION GRANTING REPLACEMENT LIENS 8-31-20 [12]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2020. The initial emergency hearing was conducted on August 31, 2020, and the final hearing set by order of the court for September 17, 2020.

The Motion to Use Cash Collateral is xxxxx.

Request for Continuance and Interim Extension of Exclusive Period

On February 18, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to a date to be determined at the February 23, 2021 hearing. Dckt. 415. The parties informed the court that they have agreed to vacate the briefing schedule for all the hearings scheduled in this case related to the Motion to Use Cash Collateral (FWP-2), the Motion for Extension of Exclusive Period (FWP-17), the Motion to Terminate Exclusivity (NRM-1), and the Approval of the Disclosure Statement (FWP-14).

The parties have also agreed to an interim cash collateral order authorizing use of cash collateral in the amounts and for the purposes as stated in the present cash collateral budget attached as Exhibit A to this court's Fifth Interim Order on the Motion (Docket No. 306), through the week of a subsequent hearing date to be determined by the court provided that such subsequent hearing date is within thirty (30) days of the February 23 Hearing on cash collateral. *Id.*

The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

The Court authorized the Seventh Interim Use of Cash Collateral through and including March 26, 2021, and Extended Exclusivity for the Debtor in Possession pursuant to the Stipulation of the Debtor in Possession, The Prudential Insurance Company of America, and First Northern Bank of Dixon through and including March 26, 2021. Order, Dckt. 430.

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5. 20-24123-E-11 NRM-1 RUSSELL LESTER Thomas Willoughby

CONTINUED MOTION TO TERMINATE EXCLUSIVITY
1-21-21 [340]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on January 21, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Terminate Exclusivity is xxxxx.

The Prudential Insurance Company of America, creditor with a secured claim ("Creditor Prudential"), moves to terminate the exclusive period for Debtor in Possession to file a chapter 11 plan and to solicit extend the exclusive period of time for the Debtor in Possession to solicit acceptances thereof pursuant to 11 U.S.C. § 1121(d) on the basis that cause exists to terminate the exclusive period in this case because Debtor's proposed plan is "unconfirmable" as it fails to meet Bankruptcy Code requirements.

The current deadline for the Debtor in Possession to confirm a plan prior to expiration of the exclusivity period as provided in 11 U.S.C. § 1121 (c) is February 23, 2021.

First Northern Bank Response

Creditor First Northern Bank ("FNB") filed a Response on March 16, 2021. Dckt. 450. The Response is discussed below.

APPLICABLE LAW

Section 1121(c) permits any party in interest to file a chapter 11 plan with respect to Debtor if one of three condition has occurred: (1) a chapter 11 trustee has been appointed; (2) the debtor has not filed a plan before 120 days after the date of the order of relief or any extension of that period; or (3) the debtor has not filed a plan that has been accepted by each class of impaired claims and impaired interests before 180 days after the date of the order for relief or any extension of that period. 11 U.S.C. § 1121(c). Debtor retains the exclusive right to file such a plan for the first 120 days of the case and the exclusive right to solicit acceptances of such a plan for the first 180 days of the case.

The determination of whether cause exists to warrant an extension or reduction of the statutory time periods is fact specific. 7 Collier on Bankruptcy P 1121.06 (16th 2020). Several courts have enumerated the following factors (also known as the "Downing Factors") to be considered in determining whether cause exists to warrant an extension or terminate the exclusivity period:

(1) the size and complexity of the case;
(2) the necessity of sufficient time to negotiate and prepare adequate information;
(3) the existence of good faith progress toward reorganization;
(4) whether the debtor is paying its debts as they come due;
(5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
(6) whether the debtor has made progress in negotiating with creditors;
(7) the length of time the case has been pending;
(8) whether the debtor is seeking the extension to pressure creditors; and
(9) whether unresolved contingencies exist.

See In re GMG Capital Partners III, L.P., 503 B.R. 596 (Bankr. S.D.N.Y. 2014); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007); *In re Adelphia Communications Corp.*, 352 B.R. 578, 587–90 (Bankr. S.D.N.Y. 2006) (conducting a detailed review of each of the nine factors as applied to the facts of the case and granted an extension); *In re Express One Int'l, Inc.*, 35 C.B.C.2d 1045, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (finding cause to extend the exclusive period where the debtor had been diligent in its attempts to reorganize and extension was not sought for an indefinite period).

DISCUSSION

First, Prudential has objected to Debtor's Plan on the basis that Plan impermissibly attempts to force Prudential to accept less than full payment of its secured claim, notwithstanding Debtor's acknowledgment that Prudential is oversecured. Prudential is prepared to file a plan within five days of the termination of exclusivity. The Plan is a liquidation plan where all of the real property shall be marketed and sold with the proceeds of the sales to be applied to Debtor's obligations to Prudential until paid in full and any excess proceeds, if any, would first be paid to junior secured creditors in accordance with their priorities under applicable law, and then distributed to Debtor's administrative and general unsecured creditors pursuant to the requirements of the Bankruptcy Code.

Prudential argues there is cause to terminate the exclusivity because Prudential's plan will provide better treatment and recoveries for secured and unsecured creditors and complies with the Bankruptcy Code. Indeed, Creditor alleges that Debtor in Possession has not made "good-faith progress" toward reorganization but has instead proposed an unconfirmable plan because the proposed plan (a) does not provide for the payment in full of Prudential's secured claim; (b) is not fair and equitable as required

under Section 1129; (c) attempts to provide Debtor and his wife (who is a non-debtor) with impermissible releases; (d) is not feasible; and (e) fails to provide creditors with at least as much as they would receive in a chapter 7 liquidation.

Creditor Prudential points the court to *In re New Meatco Provisions, LLC*, where the court set a number of considerations when evaluating whether cause exists to terminate exclusivity. These considerations are known as the "Downing Factors" as discussed above. In that case, the bankruptcy court granted Creditors' Committee motion to terminate the exclusivity period after the case had been pending for almost a year without a confirmed plan and negotiations with the Creditors' Committee and other constituents were acrimonious and had reached an impasse. *In re New Meatco Provisions, LLC,* No. 2:13-bk-22155-PC, 2014 Bankr. LEXIS 914, at *9 (Bankr. C.D. Cal. Mar. 10, 2014).

Here, Creditor Prudential contends the relevant factors support termination of the exclusivity. Prudential asserts that terminating exclusivity will move this bankruptcy case forward instead of spending time litigating Debtor's Plan. Creditor further asserts that it is appropriate to subject Debtor's plan process to the market test by allowing Prudential to present a competing plan and solicit acceptances.

Moreover, Prudential argues that termination of exclusivity will not prejudice Debtor in Possession because Debtor in Possession will retain his right to pursue the proposed Debtor's Plan notwithstanding the termination of exclusivity. Adding, that termination may also reduced costs associated with confirmation because it allows Prudential the opportunity to file their Plan now lowering costs to the estate and possibly lessening the burden on all parties and the court with respect to discovery and confirmation-related litigation, as both plans can be evaluated simultaneously.

Further, Creditor alleges that Debtor in Possession is using the exclusivity to pressure Creditor Prudential and other creditors into accepting a flawed plan and insulating itself from challenges to the plan. By terminating the exclusivity period, Prudential would be allowed to propose a plan that will maximize value for all stakeholders.

Creditor disagrees with Debtor's assertion that the size and complexity of the case weighs in favor of extending Debtor's exclusivity. Adding that Debtor's real estate and other assets appear to be sufficient to satisfy the claims of Debtor's creditors if they are properly liquidated and that there is nothing novel about Debtor's business operations. Creditor further argues that Debtor's payment of debts as they become due does not support continuing exclusivity, mainly because while Debtor has been paying operational debts (with proceeds from Prudential's collateral), Debtor in Possession has not made any payments to Prudential.

Lastly, Creditor argues that terminating the exclusivity is in the interests of justice because it will allow Prudential to file a confirmable plan that will move the case forward, allow other creditors to review Prudential's plan and compare it to that of Debtor in Possession, and reduce costs to the estate.

Requests for Continuance
and Interim Extension of Exclusive Period

Debtor filed a status report on February 2, 2021, Dckt. 383, stating Creditors Prudential and FNB, and Debtor agreed to meet for mediation on February 9 or 10, 2021. On February 3, 2021, the parties filed a Stipulation informing the court and stipulating to continue the hearings on this Motion and Creditor

Prudential's Motion to Terminate Exclusivity to February 23, 2021. Dckt. 386. On the Status Report he parties informed the court agreed to mediation set for February 9 or 10, 2021. Dckt. 386.

On February 18, 2021, the parties filed a Stipulation agreeing that the hearing on this matter be continued to a date to be determined at the February 23, 2021 hearing. Dckt. 415. The parties informed the court that they have agreed to vacate the briefing schedule for all the hearings scheduled in this case related to the Motion to Use Cash Collateral (FWP-2), the Motion for Extension of Exclusive Period (FWP-17), the Motion to Terminate Exclusivity (NRM-1), and the Approval of the Disclosure Statement (FWP-14).

The parties have also agreed to an interim cash collateral order authorizing use of cash collateral in the amounts and for the purposes as stated in the present cash collateral budget attached as Exhibit A to this court's Fifth Interim Order on the Motion (Docket No. 306), through the week of a subsequent hearing date to be determined by the court provided that such subsequent hearing date is within thirty (30) days of the February 23 Hearing on cash collateral. *Id.*

The parties also agreed to extend the exclusivity period through the date of the continued hearing determined at the February 23, 2021 hearing. *Id.*

Debtor filed a second status report on February 22, 2021, Dckt. 420, stating Debtor and Creditors Prudential and FNB had agreed to specially set a date of March 25, 2021 for hearing all the matters on the February 23, 2021 Calendar.

February 23, 2021 Hearing

At the hearing, the period of exclusivity was extended through March 25, 2021.

Creditor's Response

Creditor FNB filed a Response on March 16, 2021 stating their support for terminating the exclusivity period and finding that Prudential's legal reasoning was compelling while finding Debtor's reasoning to extend the exclusivity period "unavailing." Dckt. 450.

FNB contends that since the August 27, 2020 filing of this matter, Debtor will have had seven (7) months as of the date of this hearing without having succeeded in soliciting votes for even the Disclosure Statement, a precondition to soliciting votes for the plan. *Id*. at ¶¶ 2, 10. FNB believes Debtor to be unwilling or unable to propose a confirmable plan that satisfies FNB, and that the only reasonable path forward is to terminate exclusivity. *Id*. at ¶ 6. FNB asserts that he proposed plan is unfeasible, Debtor's asset valuations are unrealistic, Debtor has not committed to selling assets in satisfaction of FNB, and continues to focus their attention on operation and retention of assets contrary to the Debtor's fiduciary duty to the interests of creditors. *Id*. at ¶ 8.

In support of the statements regarding the mediation efforts, Creditor FNB filed the Declaration of Howard Nevins, counsel for creditor FNB. Declaration, Dckt. 451. Nevins testifies that the February 10, 2021 was "unsuccessful" and although a second mediation did occur on March 9, 2021, FNB was not invited to attend the mediation. *Id*. at ¶ 6. It is his understanding that Prudential and Debtor were unable to reach an agreement after negotiations regarding Prudential's claims at the second mediation. *Id*. at ¶ 7.

Creditor argues that Debtor's Motion to Extend the period of Exclusivity to March 31, 2021, has been effectively granted by the continuance of the hearing to March 25, 2021, yet Debtor has not successfully solicited the votes necessary within the 180-day period. Dckt. 450, at ¶ 9.

According to Creditor FNB, continued delay will diminish the value of the estate to the detriment of creditors, and if there is a surplus, to the detriment of Debtor. Debtor has not made payments on $1.9 million in post-petition interest that has accrued to creditors Prudential and FNB. *Id*. at ¶ 14. Interest continues to accrue to Prudential at a rate of $210,000 per month and to FNB at a rate of $66,000 per month. *Id*. at ¶¶ 12-13. Additionally, the administrative costs are "extraordinarily expensive," Debtor's counsel estimate costs of $1 million and they could be even greater. *Id*. at ¶ 15. Both creditors are incurring high attorney's fees, are oversecured, and the "burn rate" is greater than the case can support. *Id*. at ¶ 16.

Moreover, Debtor fails to acknowledge the fact that the business continues to be unprofitable with too much debt and too little revenue. *Id*. at ¶ 18. It is unclear if "Debtor's assets are worth enough, on a realizable basis, to satisfy the claims of all creditors in full. And as noted above, the situation only deteriorates further over time, rather than improving." *Id*. at ¶ 19. FNB favors a prompt liquidation of Debtor's assets, where focus and certainty should be on certain property and not so much on the Debtor's farming and process operations. *Id.* at ¶ 20.

DECISION

The court finds that xxxxxxx.

Therefore, the Motion is 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 to Terminate Exclusivity filed by The Prudential Insurance Company of America, creditor with a secured claim ("Creditor Prudential"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxx**.

6.	**20-24123-E-11** **FWP-20**	**RUSSELL LESTER** **Thomas Willoughby**	**MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY O.S.T.** **3-19-21 [462]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2021. By the court's calculation, 6 days' notice was provided. The court set the hearing for March 25, 2021. Dckt. 460.

The Motion for Authority to Sell Free and Clear of Liens was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell approximately 70.3 acres of a walnut orchard known as County Road 89, Unincorporated, 95694, APN 050-100-015 & APN 050-100-032 and commonly referred to as the "Gordon Ranch" and all irrigation equipment including wells, pumps, and filters, and any other fixtures to the Property ("Property").

The proposed purchaser of the Property is Ravinderjit Singh, and Gagan Mall ("Buyer"), and the terms of the sale are summarized below (the full terms of the sale are described in the Vacant Land Purchase Agreement and Joint Escrow Instructions dated February 25, 2021, and accompanying documents ("PSA") filed as Exhibit A, Dckt. 466.):

A. The purchase price is $1,400,000, with an initial deposit of $25,000, a $395,000 down payment, and a $980,000 loan.

B. The sale includes all irrigation equipment, including wells, pumps and filters.

C. The sale of the Property is on an "AS-IS" basis, subject to certain environmental disclosures related to the Property as set forth in the PSA.

D. Seller will not complete the installation of PG&E nor the plumbing to hook up the two well pumps.

E. Seller shall be responsible to continue orchard operation through the 2021 crop year, pay all cost associated with orchard operation, and retain the revenue for the 2021 crop year.

F. First Northern Bank's ("FNB") first priority lien on "growing crops" will not be conveyed to buyers and shall remain property of the estate.

G. Broker Green Fields represents Buyer and Seller and their commission will be 4.25 percent of the gross purchase price.

Proposed Bidding Procedures

The Debtor in Possession requests adoption of limited bidding procedures for the sale of the Property subject to overbid, summarized as follows:

1. Valuation of the consideration being received by the estate from the sale of the Property at $1,400,000.00;

2. Initial overbid must be at least $50,000 higher than the $1,400,000.00 gross sale price, and each successive bid thereafter must be at least $10,000 more than the previous highest qualified overbid or such other amounts as the Debtor in Possession determines are appropriate;

3. The court to require an overbid match or exceed the benefit to the Estate of the non monetary terms contained in the PSA;

4. Any overbid must be on the same terms and conditions as the PSA (including posting a $25,000 deposit into the sale escrow prior to the Sale Hearing), and any overbidder must agree to sign a Purchase Sale Agreement for the purchase of the Sale Property in substantially the same form and terms as the PSA; and

5. Approval by the court of the second highest bid as a back-up buyer on the same terms and conditions as the PSA.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of Prudential and First Northern Bank of Dixon ("FNB"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

11 U.S.C. § 363(f)(1)–(5).

In support of the sale free and clear of liens held by Prudential and FNB, Debtor makes the following arguments.

Though Debtor believes Creditors will consent and thus the sale may move forward pursuant to § 363(f)(2), to the extent that FNB and/or Prudential does not consent to the sale, sections 363(f)(1), (3), (4) and (5) provide authority for approving a sale over FNB's objection. Dckt. 464 at 5:17.

Under section 363(f)(1), because ownership in the income of the growing crop does not transfer to Buyer, FNB and Prudential do not need replacement liens on the income from the 2021 crop. FNB's lien is in the same position and attaches to the proceeds of the sale of the crop. *Id*. at 5:20.

Under section 363(f)(3), the purchase price of Gordon Ranch does not affect FNB's rights because it will maintain its likely only material lien on the growing crops. *Id*. at 6:1.

Under section 363(f)(4), there is a *bona fide* dispute as to whether Prudential or FNB is in first position on the growing crops, and the allocable value of such personal property, if any, to Prudential and FNB. *Id*. at 6:4.

Under section 363(f)(5), FNB may be compelled to accept the proceeds of the sale of the crops in satisfaction of its lien on the crops on the basis that FNB and Prudential will be granted replacement liens and the liens will attach to the proceeds of the sales. *Id*. at 6:21.

For this Motion, Movant ~~has established Grounds for Sale Free and Clear of Liens~~.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the proposed sale is projected to generate substantial revenues for the secured creditors and Property will generate revenue for the bankruptcy estate through the end of 2021 which will help to reduce debt and is one of the requirements in Debtor in Possession's current Plan.

Movant has estimated that a 4.25 percent broker's commission from the sale of the Property will equal approximately $59,500.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 4.25 percent commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Russell Wayne Lester, an individual, dba Dixon Ridge Farms, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) ~~and (f)(1), (3), (4) & (5)~~ to Ravinderjit Singh and Gagan Mall ("Buyer"), approximately 70.3 acres of a walnut orchard known as County Road 89, Unincorporated, 95694, APN 050-100-015 & APN 050-100-032 and commonly referred to as the "Gordon Ranch" and all irrigation equipment including wells, pumps, and filters, and any other fixtures to the Property ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $1,400,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 466, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. ~~The Property is sold free and clear of the liens of Prudential and First Northern Bank of Dixon, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363 (f)(1), (3), (4) & (5), with the lien of such creditor attaching to the proceeds Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other~~

~~secured claims, and amount provided in this order; pending further order of the court~~.

D. The Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Debtor in Possession is authorized to pay a real estate broker's commission in an amount not more than 4.25 percent of the actual purchase price upon consummation of the sale. The 4.25 percent commission shall be paid to Debtor in Possession's broker, Green Fields.

7. 19-90464-E-7 RICHARD RICKS MOTION FOR SUMMARY JUDGMENT
20-9013 MAS-1 2-11-21 [15]
EDMONDS V. HUGHES

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), on February 11, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Summary Judgment is granted and judgment in the amount of $105,522.23 plus interest thereon at the rate of 7% per annum from and after April 20, 2018 until the date of entry of judgment against Defendant.

Irma Edmonds, the Chapter 7 Trustee in the underlying bankruptcy case ("Plaintiff") filed the instant adversary on November 19, 2020, against Joy Hughes ("Defendant"), former spouse to Richard Arlan Ricks, the Chapter 7 debtor ("Debtor"). Plaintiff asserts that Debtor made a transfer of property to Defendant less than two years prior to the filing of the instant bankruptcy case and this adversary action has been filed to recover the voidable and/or fraudulent transfer made.

The Motion for Summary Judgment for avoidance of transfer is a core matter proceeding, arising under the Bankruptcy Code for which final orders and judgment are issued by the bankruptcy judge. The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), with Opposition filed by the Defendant.

As addressed below, the Court grants the Motion for Summary Judgment, and judgment shall be entered by this court determining the transfer made on April 2018 is voidable pursuant to 11 U.S.C. § 548 and subject to recovery pursuant to California Code § 3439.01 et seq. as incorporated by 11 U.S.C. § 544(b).

Review of the Complaint

Plaintiff seeks a determination that the transfer made on April 2018 is subject to recovery as a fraudulent transfer pursuant to 11 U.S.C. § 548 and California Code § 3439.01 et seq. as incorporated by 11 U.S.C. § 544(b), where the claim arises from Debtor's fraudulent transfer on April 2018 to Defendant for no consideration with intent to defraud creditors, and furthermore, said transfer rendered Debtor insolvent. Dckt. 1. The grounds upon which the claim is based are as follows:

A. Defendant was the spouse of Debtor from and after 2001 and was the spouse of the Debtor at the time the Debtor became indebted to a creditor, Hirst Law Group, P.C. ("Creditor").

B. Creditor obtained a large arbitration award against Debtor on August 23, 2017, and subsequently obtained a judgment ("Judgment") based on such arbitration award in 2018. No appeal of the Judgment was ever filed, and the Judgment has long since been final.

C. At the time Creditor obtained the arbitration award against Debtor, Debtor and Defendant were the sole owners and holders of all membership interests in and to Solomon Solutions, LLC ("Solomon").

D. The membership interests in Solomon were community property of Debtor within the meaning of California Family Code Section 910 because Debtor and Defendant were married in California and resided in California from the time of their marriage through and including the date Debtor filed for bankruptcy herein.

E. Less than 2 years prior to the filing of the instant bankruptcy case by the Debtor, and at a time when (a) the liquidation value of the Solomon was worth in excess of $100,000 and (b) no part of the arbitration award had been paid, Debtor made a transfer (the "Transfer") to Defendant of all of his right, title and interest in and to Solomon.

F. Debtor received no money or property in exchange for the Transfer.

Prayer for Relief

A. For avoidance of the Transfer,

B. For damages of not less $100,000, and

C. For such other and further relief as the Court may deem proper.

Review of the Answer

In response, Defendant-Debtor filed an Answer to the Complaint on December 15, 2020.

Dckt. 7. Defendant admits allegations regarding marriage and separation but that the divorce is not yet final. Defendant denies knowledge of the arbitration award and subsequent judgment rendered in favor of Hirst Law Group.

Defendant asserts that at the time of their separation, Debtor transferred the community property interest in Solomon Solutions, LLC in consideration for her promise not to seek child support or spousal support payments from Debtor. Defendant then denies all allegations as to the first cause of action for recovery of the transfer pursuant to § 548 and as to the second cause of action for recovery of the transfer pursuant to § 544.

APPLICABLE LAW FOR A MOTION FOR SUMMARY JUDGMENT

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

First Cause of Action Pursuant to
11 U.S.C. § 548- Recovery of Fraudulent Transfer

11 U.S.C. § 548 provides in part that a truster may avoid a pre-petition transfer, stating in 11 U.S.C. § 548(a), in pertinent part:

> (a)
> (1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
>
> > (A) **made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud** any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; **or**
> >
> > (B)
> >
> > (i) **received less than a reasonably equivalent value** in exchange for such transfer or obligation; **and**
> >
> > (ii)
> >
> > > (I) **was insolvent** on the date that such transfer was made or such obligation was incurred, or **became insolvent** as a result of such transfer or obligation; . . . .

Congress provides in 11 U.S.C. § 548(d) some specific definitions for use in determining whether there is an avoidable fraudulent conveyance. These definitions include:

> (2) In this section—
>
> (A) **"value"** means property, or satisfaction or securing of a present or antecedent debt of the debtor, but **does not** include an unperformed **promise to furnish support to the debtor or to a relative of the debtor**; . . . .

11 U.S.C. § 548(d)(2)(A) (emphasis added). This discussed in Collier on Bankruptcy:

> The statute is clear that value "does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor." This is a policy choice that certain promises, enforceable under nonbankruptcy law, may be too ephemeral or malleable to count as value when the debtor gives up property creditors potentially could look to for satisfaction of their debts.

5 Collier on Bankruptcy P 548.03 (16th 2020). This was discussed by the bankruptcy court in *Kendall v. Carbaat (In re Carbaat)*, 357 B.R. 553, 560-561 (Bankr. N.D. Cal. 2006) (emphasis added): [Fn.1.]

> (1) Reasonably Equivalent Value
>
> As set forth above, both 11 U.S.C. § 548(a)(1)(B) and Cal. Civ. Code § 3439.05 define a constructively fraudulent transfer as a transfer for which the debtor did not receive "reasonably equivalent value." To determine whether the transfers sought to be avoided by the Trustee were constructively fraudulent, the Court must determine the value of what the Debtor transferred and the value of what he received. The Court must then determine whether the latter value is reasonably equivalent to the former. "Reasonable equivalence" does not require exact equality in value. *In re Food & Fibre Prot., Ltd.*, 168 B.R. 408, 417 (Bankr. D. Ariz. 1994); *see also BFP v. Resolution Trust Corp*., 511 U.S. 531, 540 n.4, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994).
>
> (a) Value of Transferred Property
> . . .
>
> As noted above, the definition of value in both 11 U.S.C. § 548(d)(2)(A) and Cal. Civ. Code § **3439.03 excludes an unperformed promise to provide future support to the debtor or to another person.** The rationale of these provisions, although not their precise language, **precludes treating the Debtor's waiver of future spousal support as value**. The rationale behind the statutory exclusion is that an unperformed promise to provide future support to the debtor does not benefit creditors in a liquidation. *In re Lucas Dallas, Inc.*, 185 B.R. 801, 807 (Bankr. 9th Cir. 1995) (citing California legislative history); *see In re Agric. Research & Tech. Group, Inc.*, 916 F.2d 528, 540 (9th Cir. 1990)(citing comment to Uniform Fraudulent Transfer Act). Similarly, in a chapter 7 case, the waiver of a debtor's obligation to pay future spousal support from his post-petition income does not create value from a creditor's perspective.

FN. 1. This court's discussion of the applicable California Fraudulent Conveyance law, as addressed in *Kendall v. Carbaat*, is provided below in the review of the Second Cause of Action seeking relief pursuant to 11 U.S.C. § 544(b).

The court begins with a review of the undisputed facts. Both Plaintiff and Defendant agree that on April 20, 2018, Debtor transferred one-half interest in Solomon Solutions, LLC, a business entity that was equally owned as community property, to Defendant.

Moreover, it is undisputed that Debtor filed the underlying bankruptcy cased on May 21, 2019. Thus, the transfer was made within two years before the filing of the bankruptcy petition in this case.

Plaintiff's principal source of evidence for the allegations regarding the transfer are statements made by Debtor and Defendant under penalty of perjury at the respective 2004 examinations conducted by Debtor's former attorneys in the *qui tam* action. Plaintiff has provided properly authenticated copies of the transcripts and has filed them as exhibits in support of the motion. *See* Exhibits C and D, Dckt. 19.

Evidence of Transfer
Presented by Plaintiff

The facts show that Debtor transferred his only significant non-exempt asset, a one-half interest in a limited liability company to Defendant. The specific statements made by the Debtor at the 2004 examination with respect to his income and assets include the following:

> Mr. Serlin: So in your bankruptcy schedules you did not list any deposit accounts, as in bank accounts or credit union accounts. Do you not have any such accounts?
>
> Debtor: I don't have any bank accounts.
>
> Mr. Serlin: When is the last time you did?
>
> Debtor: Well, I really don't know.
>
> Mr. Serlin: Do you know which bank or credit union or savings and loan that you had a bank account with when you last had one?
>
> Debtor: Yeah. That would have been Oak Valley.

Exhibit D, 2004 Examination Transcript at 11:2-12, Dckt. 19. The court is familiar with the *qui tam* action and the subsequent award given to Debtor in that whistleblower action. The following statements made by Debtor further elucidate as to Debtor's financial situation at the time of the transfer:

> Mr. Serlin: So of this 2.4 million total that you were awarded, 1.2 million hits your bank account, and this is in May 2016. What's become of those funds? Are they all gone?
>
> Debtor: All gone.

Exhibit D, 2004 Examination Transcript at 29:12-17, Dckt. 19.

Regarding whether Debtor had income or any significant assets, Defendant testified at the 2004 Examination:

> Mr. Serlin: So following the receipt of the whistleblower payment, did [Debtor] stop driving for Uber and Lyft?
>
> Defendant: Yes.

Mr. Serlin: What did he do, if anything, for income after the receipt of the whistleblower payment?

Defendant: He didn't do anything for income.

Mr. Serlin: Did he do anything for income to your knowledge after the separation in April of 2018?

Defendant: No.

Exhibit C, 2004 Examination Transcript at 93:21-25 and 94:1-4, Dckt. 19.

The testimony presented by Plaintiff is evidence that his one-half interest of the LLC was Debtor's principal asset as he had not been employed for some time, had no other bank accounts, and no other assets were owned by Debtor, namely the *qui tam* award which had already been spent.

Moreover, Plaintiff presents evidence in the form of bank statements which show that on the date the Debtor made the transfer, Solomon Solutions had approximately $211,000 in its Oak Valley bank account. Exhibit F, Dckt. 19, at 69, 73.

Plaintiff further presents the court with sworn testimony from Defendant that Solomon had no debt at that time. When asked if the LLC had any debt at the time Debtor resigned and transferred his interest to her, Defendant testified that she did not believe it did. Exhibit C, 2004 Examination Transcript at 44:3-5.

Thus, the LLC being equally owned at that time, it may be inferred from this evidence that Debtor's partial interest was then worth over $100,000.

Evidence of No Consideration Given
Presented by Plaintiff

At their 2004 Examination, Debtor and Defendant testified under penalty of perjury that Defendant did not give Debtor any money or property in exchange for the transfer.

The evidence shows that Defendant did not give reasonable consideration in exchange for the transfer of Debtor's one-half interest in the LLC to Defendant. At the 2004 examination, Defendant testified that at the time Debtor surrender his interest to her, "There was no monetary – there was no money that exchanged." Exhibit C, 2004 Examination Transcript at 43:19-24.

Evidence of Indebtedness and Insolvency
Presented by Plaintiff

Plaintiff presents, and it is undisputed, that Hirst Law Group, P.C. obtained an arbitration award against Debtor in the amount of just under $100,000 in August, and later obtained a judgment in the amount of $108,805.07 in the summer of 2018. *See* Exhibit A, Arbitration Award, Dckt. 19; *see also* Exhibit B, Judgment, Dckt. 19. This is evidence of the indebtedness Debtor faced at the time of the transfer.

Plaintiff presents evidence that Debtor was insolvent at the time of the transfer. As stated above, Defendant testified that Debtor did not have any income at the time of the award or assets other than his half interest in Solomon Solutions, LLC. Having no income or assets, Debtor still had an obligation to pay in the amount of over $100,000.

11 U.S.C. section 101(32) defines insolvent as the condition where the debtor's debts exceed the value of the debtor's non-exempt assets. Looking at the facts presented, Debtor was insolvent as Debtor had a debt of over $100,000 and without income after the transfer of his interest, Debtor was rendered insolvent.

Evidence of Intent
Presented by Plaintiff

Plaintiff presents the court with what she argues is circumstantial evidence of intent that meets the "badges of fraud" established in *In re Acequia, Inc.* In that case, the Ninth Circuit formulated an approach a court may take to review the circumstances surrounding the transfer in issue and determine whether the parties involved transferred property to defraud creditors:

> Among the more common circumstantial indicia of fraudulent intent at the time of the transfer are: (1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer.
>
> The presence of a single badge of fraud may spur mere suspicion; the confluence of several can constitute conclusive evidence of actual intent to defraud, absent "significantly clear" evidence of a legitimate [**10] supervening purpose. *Max Sugarman, 926 F.2d at 1254-55* (emphasis added) (citations and additional emphasis omitted). Accord, e.g., *Hayes v. Palm Seedlings Partners (In re Agricultural Research & Technology Group, Inc.)*, 916 F.2d 528, 534-35 (9th Cir. 1990); *Kupetz v. Wolf*, 845 F.2d 842, 846 (9th Cir. 1988).

Acequia, Inc. v. Clinton (In re Acequia, Inc.), 34 F.3d 800, 806 (9th Cir. 1994). Adding that,

> [O]nce a trustee establishes indicia of fraud in an action under section 548(a)(1), the burden shifts to the transferee to prove some "legitimate supervening purpose" for the transfers at issue.

Id.

Here, Plaintiff argues that the evidence presented, Defendant's Answer, and Defendant's and Debtor's sworn 2004 Examination testimony, meets the "badges of fraud" and thus shows that there was intent to defraud creditors. Plaintiff argues that the sworn testimony shows that at the time of the transfer, Debtor had suffered a substantial arbitration award against him that was unmanageable and rendered him insolvent or close to it, especially due to Debtor not having income or assets (other than the one-half interest in the LLC). Further, that the transfer was made to an insider, Defendant being Debtor's spouse at the time, even if in the process of separating, and no money or property was given to Debtor in consideration for the transfer.

Additionally, in her Answer, Defendant does not dispute that she was married to Debtor at the time the arbitration award and judgment against Debtor were issued. Defendant does not dispute that she was married to Debtor when the transfer was made and neither does she dispute that the transfer occurred on April 2018.

The court finds that there is evidence that at the time of the transfer Defendant was still Debtor's spouse, Debtor had not prevailed in his action against his former attorneys, was aware of having received an arbitration award against him, Debtor transferred his entire one-half interest to Defendant. Moreover, the evidence shows that Debtor had no other valuable asset except for his interest in the LLC and Defendant did not provide consideration for Debtor's transfer of his interest to Defendant.

Second Cause of Action Pursuant to
11 U.S.C. § 544- California Civil Code section 3439.01 et seq.

California Civil Code section 3439.01 et seq. provides for the recovery of a voidable transfer under California laws and is incorporated into the bankruptcy code by 11 U.S.C. § 544(b). California Civil Code § 3439.04 lays out the basic California law on the avoiding of a transfer, stating (emphasis added):

> § 3439.04. Transfer with intent to defraud or transfer not given in exchange for value: Determining actual intent
>
> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:
>
> (1) **With actual intent to hinder, delay, or defraud any creditor of the debtor.**
>
> (2) **Without receiving a reasonably equivalent value in exchange for the transfer** or obligation, **and** the debtor either:
>
> > (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.
> >
> > (B) Intended to incur, or believed or **reasonably should have believed that the debtor would incur, debts beyond the debtor's ability** to pay as they became due.
>
> (b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:
>
> > (1) Whether the **transfer** or obligation **was to an insider**.
> >
> > (2) Whether the debtor retained possession or control of the property transferred after the transfer.
> >
> > (3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether **before the transfer was made** or obligation was incurred, the **debtor had been sued or threatened with suit**.

(5) Whether the **transfer was of substantially all the debtor's assets**.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the **value of the consideration received by the debtor was reasonably equivalent** to the value of the asset transferred or the amount of the obligation incurred.

(9) **Whether the debtor was insolvent or became insolvent** shortly after the transfer was made or the obligation was incurred.

(10) Whether the **transfer occurred shortly before or shortly after a substantial debt was incurred**.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

Consistent with how Congress has defined "value" in 11 U.S.C. § 548(d)(2)(A), the California Legislature defines the term "value" in connection with a transfer in California Civil Code § 3439.03 as follows (emphasis added):

> § 3439.03. Value for transfer or obligation
>
> Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but **value does not include an unperformed promise** made otherwise than in the ordinary course of the promisor's business **to furnish support to the debtor or another person**.

The section is virtually identical to § 548, Civil Code § 3439.04, a debtor's transfer is voidable / fraudulent if either: the debtor made the transfer with actual intent to hinder, delay or defraud any creditor; or the debtor did not receive reasonably equivalent value in exchange for the asset transferred and either: (ii) the debtor's assets were unreasonably small compared to a debt that the debtor recently incurred or was about to incur, or (ii) the debtor had incurred debts beyond its ability to pay the debts as they came due.

Evidence has been presented to show that Debtor did not receive reasonably equivalent value for the property transfer. As with the analysis of the Federal law, here Defendant's defense is that "value" was given in the form of her allegedly "giving up" future support for herself, Debtor's relative (effectively paying the support obligation herself) and for her and the Debtor's relatives, their two teenage children.

Defendant also clearly states that this transfer was not for any antecedent debt, but for possible future support obligations owed to relatives of the destitute Debtor.

Further, the evidence also shows that Debtor had a intent to hinder, delay, or defraud a creditor, Hirst Law Group, having been "hit" with the substantial arbitration award. Debtor's assets were unreasonably small (or if Debtor is to be believed, non-existent) for the obligations he had incurred.

Opposition Evidence Presented by Defendant

The burden now shifts to Defendant to show that a legitimate supervening purpose is present that can contradict the circumstantial evidence, or "badges of fraud," presented by Plaintiff above. Defendant argues, however, that the "badges of fraud" do not create a presumption of fraudulent intent but facilitates the analysis on whether intent to defraud creditors is shown. Moreover, Defendant argues that this being Motion for Summary Judgment the standard is higher where the court must find pursuant to FRCP 56(a) that there is no genuine dispute as to any material fact and contends that there are disputed issues of fact regarding fraudulent intent.

In support of her Opposition, Defendant provides the court with a Declaration. Dckt. 23. But first, the court must turn to Plaintiff's objections to portions of Defendant's Declaration pursuant to Local Bankruptcy Rule 7056-1(f). Dckt. 28.

Paragraph 6, which states:

> In early August 2016, [Debtor] loaned Solomon Solutions, LLC $275,000 at 5% interest to be used to purchase property at 804 Pochard Way, Suisun. After [Debtor] remodeled the home, our LLC sold the property for $371,000. We made a small profit on the sale, but by April 2018 the LLC had not repaid [Debtor] his $275,000 loan plus accrued interest. Also, Solomon Solutions, LLC was paying for [Debtor's] monthly VISA credit card charges, so by April 2018 the LLC's bank balance was well less than the $275,000 loan owed to [Debtor].

Plaintiff objects to this statement on the basis that each sentence is "replete with inadmissible hearsay," lacks foundation, violates the best evidence rule, and materially contradicts Defendant's sworn FRBP 2004 examination.

Here, these "objections" and the basis for each consists of that in unexplained ways the testimony is "replete with inadmissible hearsay" (without out identifying the hearsay), and that is somehow "lacks foundation," and the "best evidence rule" is somehow violated, and that the current testimony is not credible because it contradicts prior testimony under penalty of perjury of the Defendant. While the court could assemble for Plaintiff an analysis of the applicable law, address the various parts of the testimony to which the various references to the Federal Rules of Evidence could possibly relate, and then advocate for Plaintiff, the court declines the invitation to do such.

Thus, the recitation of terms from the Federal Rules of Evidence is overruled without prejudice. Further, the last objection based upon the testimony not being credible because now, faced with this litigation, Defendant testifies differently under penalty of perjury that when she testified previously before being faced with litigation in which the prior testimony was not to her advantage, that credibility determination would be made at trial with the witness there in the courtroom.

Interestingly, if allowed, this testimony appears to show that the Defendant was very involved in the operation of Solomon Solutions, LLC, had detailed knowledge of its transactions, and of the financial dealings, and distress, of the Debtor. Further, it would show that Debtor was even more heavily "invested" in Solomon solutions, LLC, his interest in that LLC had an even greater "value" to Debtor and his creditors due to him investing significantly more than the Defendant.

Next, Paragraph 10 which states:

> In my opinion, the property at 1957 North Boston Place, Tulsa, Oklahoma has not increased in value since being purchased by Solomon Solutions, LLC in May 2018. Its market value therefore is $27,000. It is the sole asset of Solomon Solutions, LLC since on April 20, 2018 the LLC was indebted to [Debtor] for $275,000 plus interest and the bank balance on that date was far less than the amount owed to [Debtor] at that time. After we broke up and separated, [Debtor] had himself repaid by Solomon Solutions, LLC, leaving the Oklahoma residential property as the only asset of the LLC that was now in my name.

Plaintiff objects to this statement on the basis that the first sentence is irrelevant by reason of the times and contains improper opinion testimony.

Plaintiff further objects to the third and fourth sentences on the grounds that it contains an improper legal opinion, is based on inadmissible hearsay, lacks foundation, violates the best evidence rule, and contradicts her sworn FRBP 2004 testimony.

The objection is sustained. Defendant is not a real estate agent or real estate expert and thus her opinion is improper as to the value of the Oklahoma real property. Though Plaintiff does not cite to the applicable Federal Rule of Evidence in her objection, the court identifies it as Federal Rules of Evidence 701 (Lay Person opinion), and 702 and 703 (expert/specialized knowledge witness testimony). Here, Defendant offers no foundation for the court to find that she has any ability to provide opinion testimony as to value. Rather, she is merely arguing value for which there is no testimony. The objection to Defendant's testimony is sustained.

As to the third and fourth sentences, it is bare naked testimony of facts, not opinions. No basis is shown of how the Defendant has this knowledge, however, if she does, it appears that she has detailed knowledge of the operation of Solomon Solutions, LLC and at least part of the Debtor's finances.

As it pertains to the value of the transfer, Defendant disputes that the interest should be valued according to the funds reflected in bank statements for the LLC's bank account. Indeed, Defendant testifies under penalty of perjury that although the bank records reflected such an amount, there was an outstanding loan obligation to repay Debtor for a $275,000 loan Debtor made to the LLC in August of 2016. Declaration, ¶ 6, Dckt. 23. Thus, Defendant testifies, there was a zero net value at that time to the membership of Debtor.

At the 2004 Examination, Debtor testified that the money Debtor had put into the LLC in the amount of $250,000 was paid back to him by Solomon Solutions. Exhibit D, at 30:6-14.

Again, to the extent that Defendant testifies differently under penalty of perjury that when she testified previously before being faced with litigation in which the prior testimony was not to her advantage, that credibility determination would be made at trial with the witness there in the courtroom.

In her Declaration, Defendant testifies that there was no intent to defraud creditors because at the time of the transfer she had no knowledge of the arbitration award or judgment and believed that Debtor was agreeing to the transfer because they were separating. Declaration, ¶ 11, Dckt. 23. Defendant seems to misunderstand the issue at hand. Lack of knowledge from the transferee is not the required element. Under section 548(a), the required *mens rea* comes from Debtor who is making the transfer, since the transfer is being made with the intention that creditors cannot go after the property being transferred.

Defendant further alleges that the true intent of the parties regarding the transfer was to make an agreement regarding how to divide their community property and how to settle the support and child care issues that would present themselves upon filing their divorce case. No documentation of such "agreement" is provided, though Defendant now testifies to such as part of her defense to the Plaintiff recovering the transfer as having been fraudulently made thirteen months prior to the commencement of Debtor's bankruptcy case.

Defendant further disputes that no money or property was given to Debtor in exchange for the Transfer. Arguing that receiving an "informal promise not to proceed in the planned divorce case against him for support while he assisted with the child care for the infant son of their single mom daughter [. . .] is something of value."

However, no evidence is presented to show otherwise, where Plaintiff has presented testimony from Defendant stating that no monetary value was given to Debtor at the time of the transfer as discussed above. Moreover, as discussed by Plaintiff in her motion, Defendant cannot waive child support as a matter of California law. Most interestingly, Defendant asserts waiver of spousal support. The evidence shows that Debtor had no income, the money he was awarded through the *qui tam* action was gone, and Defendant was the one working this entire time as she states in her 2004 Examination. Quite possibly the estate, and now Debtor, have a claim for back spousal support owed to Debtor.

Additionally, Defendant argues that because the LLC owed money to Debtor, the LLC interest had zero value and thus the promise not to seek child or spousal support was reasonable and adequate. This argument appears to run contrary to Defendant's defense, and the value to Debtor was doubled due to the LLC owing him, and ultimately his bankruptcy estate, a substantial amount for all of the additional amounts he "invested" in the LLC.

Defendant also disputes that Debtor was left insolvent after the transfer, yet no evidence is presented to support this. Defendant herself testifies that Debtor had no income, the *qui tam* action award had already been used, and that indeed she agreed to the interest in the company so that he did not have to pay support which shows that he had no manner to afford making child or spousal support payments. It seems that the non-exempt one-half interest was all he had to give.

GRANTING OF SUMMARY JUDGMENT

As discussed above, the court has been presented with evidence that shows that the transfer that occurred on April 2018 is voidable on both 11 U.S.C. § 548(a) and § 548(b) grounds.

The evidence presented supports a conclusion that the transfer was made with intent to delay, defraud, or hinder creditors. Debtor made the transfer of his interest to Defendant at a time where a judgment in the amount of over $100,000 was entered against him, he had no income, and he had no other non-exempt assets.

As a separate and independent basis, the court determines that Debtor received less than a reasonably equivalent value in exchange for such transfer or obligation and was insolvent when the transfer was made to his wife, the Defendant. Defendant has provided her current testimony that the "value" she purports to have been given is only some possible, future, support obligation due to the relatives of Debtor - Defendant, his wife, and his two teenage children.

There was no antecedent debt alleged to be owed Defendant, but the future possible support obligation. As noted, given the Debtor's recitation of his dire finances and Defendant's confirmation of such, it would appear that Debtor's future support obligations for his wife may be non-existent, and based on her testimony, she may be the one with a financial obligation of support to her ex-husband (when the dissolution is completed) Debtor.

This transfer is also avoidable pursuant to 11 U.S.C. § 544(b) and California Civil Code §§ 3439.01 et seq., both as having been made with an intent to hinder, delay, or defraud any creditor of the debtor (Cal. Civ. § § 3439.04(a)(1); and as a separate and independent basis, the Debtor not receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor incurring debts reasonably believed to be beyond Debtor's ability to pay.

With respect to both the Federal and State statutes, the Defendant's value defense is "A couple of days later, RICHARD proposed that he would give up his interest in Solomon Solutions if I would not prosecute him for support in the divorce case." Declaration, ¶ 7, p. 3:7-9; Dckt. 23. This is repeated in the Opposition, as well as Defendant recognizing that there were outstanding obligations owed to Debtor that exceeded any value in the assets of the LLC, including the following:

> [t]he "value" of RICKS' interest in Solomon Solutions , LLC in late April 2018 was not reasonably equivalent to the **"value"** received by RICKS in not having to go through contested **support litigation in his divorce** with HUGHES.

Opposition, p. 2:25-27; Dckt. 22.

> RICKS suggested that they make a property settlement in which HUGHES would **take ownership of Solomon Solutions, LLC** as her separate property if she would informally agree **not to demand support payments** from him in their divorce proceedings.

Id., p. 4:15-18.

> The same day RICKS also signed a resignation as member and CEO of the LLC . On June 5, 2018 HUGHES filed a new Statement of Information with the California Secretary of State confirming that **she was the sole member of Solomon Solutions, LLC,** record number is 18-B97876. (Declaration of Joy Hughes, at par. 9, p . 4, lines 1-11 .)

Id., p. 4:25-27, 5:1-2.

> HUGHES testifies that at **the time of the transfer of RICKS' membership** interest to her, **Solomon Solutions, LLC was inactive but still obligated to repay RICKS' August 2016 loan of $275,000 plus 5% interest**; that the $200,000 balance in Solomon Solutions' bank account was insufficient to repay the loan; and that therefore the new value of their membership interest in Solomon Solutions was zero.

Id., p. 8:5-9.

> Even if there is minimal value to RICKS in receiving the **informal promise** by HUGHES **not to proceed** in the planned divorce case against him **for support** while he assisted with the child care for the infant son of their single-mom daughter, that value is reasonably equivalent to the value of the membership interest transferred to her by RICKS.

Id., p. 9:9-14.

> Furthermore, since **RICKS had the right to receive $275,000 plus 5% interest from Solomon Solutions, LLC at the time of the transfer** of his membership interest to HUGHES-his transfer of his membership interest did not in any way infringe on his personal, individual right to **recover payment of his loan from the LLC**-and the zero value he transferred to HUGHES by way of his membership interest in the LLC did not diminish his assets, therefore RICKS was likely not insolvent at the time of the transfer of the LLC membership interest to HUGHES.

Id., p. 9:13-19.

Both Debtor and Defendant testified under penalty of perjury that Defendant did not provide any money or property in exchange for the transfer. Debtor was before or was rendered insolvent by the transfer. Debtor had no income and no other non-exempt assets left. Thus, the transfer is voidable pursuant to 11 U.S.C. § 548(b). Other than Defendant now arguing that there was some discussion of Defendant not seeking spousal support from the destitute Debtor and now saying that she was purporting to give away her then 15 year old and 16 year old children's (who were 2 and 3 years from adulthood) support rights, no evidence of such has been presented to the court by Defendant.

The Motion is granted and the court enters summary judgment for Plaintiff that the transfer made by Debtor in April 2018 to Defendant is avoided pursuant to 11 U.S.C. §§ 544 and 548.

Amount of Judgment

As provided in 11 U.S.C. § 550(a) the Plaintiff seeks to recover the value of the asset transferred. Plaintiff requests in the Motion for Summary Judgment recovery of only one-half the value of the assets in Solomon Solutions, LLC when Debtor transferred his one-half interest in this community property asset – $105,522.23 (one half of the $211,000 as confirmed by Defendant), plus interest of 7% per annum pre-judgment interest.

The Motion is granted and the court awards damages as remedy for avoiding the transfer as provided by 11 U.S.C. § 550 in the amount of $105,522.23 plus interest thereon at the rate of 7% per annum from and after April 20, 2018 until the date of entry of judgment.

FINAL RULINGS

8.	**12-93049-E-11** **BLF-6** **8 thru 9**	**MARK/ANGELA GARCIA** **Mark Hannon**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, PLAN ADMINISTRATORS ATTORNEY(S)** **2-8-21 [1155]**

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period June 27, 2019, through March 25, 2021. The order of the court approving employment of Applicant was entered on March 18, 2019. Dckt. 1044. Applicant requests fees in the amount of $4,950.00 and costs in the amount of $326.22.

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?

© 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 responding to creditor's motion for an order enforcing payment obligations, investigating the status of Debtor's negotiations with creditor, requesting court approval of the release of the Court held funds, and sale of real property. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 7.3 hours in this category. Applicant prepared the fee agreement and employment application, prepared stipulations to extend the deadline for motion to dismiss, and filed a complaint objecting to Debtor's discharge. (Applicant did not bill any time under this category.)

Response to Motion For Order Enforcing Payment: Applicant spent 15.3 hours in this category. Applicant had multiple communications with the title company regarding financing of real property, had multiple communications with counsel for creditor, prepared response to the Motion, and appeared in person at the hearing on the Motion. (Applicant did not bill any time under this category.)

Investigation of Status of Debtor's Negotiation with creditor: Applicant spent 1.9 hours in this category. Applicant communicated with creditor's counsel regarding the Debtor's assertion that they were negotiating with creditor for resolution of balance. (Applicant did not bill any time under this category.)

Request for Release fo Funds Held By Court: Applicant spent 1.7 hours in this category. Applicant appeared at the Status Conference on December 3, 2020 during which Debtor's counsel requested the court enter an order authorizing disbursement.

Sale of Real Property: Applicant spent 14.8 hours in this category. Applicant appeared at the Status Conference on December 3, 2020 during which Debtor's counsel requested the court enter an order authorizing the sale of real property. On December 7, 2020, Debtor's counsel emailed Applicant a stipulation on the property. Applicant advised counsel that the document was not in proper format and must be revised. Counsel filed the stipulation without Applicant's input or authorization. Applicant then attempted to repair the damage and prepared a draft order for the court. On December 15, 2020, Applicant received from the court an Order for Emergency Status Conference Re: Stipulation to Sell Property, in which

the court noted that Debtor's Counsel had lodged the order Applicant drafted, the court had rejected the order, and that Counsel had resubmitted the order, inserting Applicant's electronic signature. Applicant prepared a Joint Ex Parte Motion and Stipulation Regarding Sale of Real Property and Distribution of Proceeds of Sale. Applicant had several communications with the parties and prepared declarations for the events.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris L. Bakken, Partner	41.0	$300.00	$12,300.00
Total Fees for Period of Application			$12,300.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $326.22 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$160.62
Copies	$0.10 per page	$165.60
Total Costs Requested in Application		$326.22

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid the reduced sum of $4,950.00 for its fees incurred for Client. Second and Final Fees in the amount of $4,950.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and allowed by the court.

Costs & Expenses

Second and Final Costs in the amount of $326.22 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$4,950.00
Costs and Expenses	$326.22

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Gary R. Farrar, the Plan Administrator, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Plan Administrator
>
> Fees in the amount of $4,950.00
> Expenses in the amount of $326.22,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator as and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

9. 12-93049-E-11 GRF-14 | **MARK/ANGELA GARCIA** | **MOTION FOR COMPENSATION FOR GARY R. FARRAR, OTHER PROFESSIONAL(S)**
Mark Hannon | **2-8-21 [1161]**

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 11 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).).

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

The Motion for Allowance of Professional Fees is granted.

Gary R. Farrar, the Plan Administrator ("Applicant") for Mark Antonio Garcia and Angela Marie Garcia, the Chapter 11 Debtors ("Client"), makes a Fourth and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 6, 2020, through March 25, 2021. The order of the court approving employment of Applicant was entered on February 28, 2017. Dckt. 939. Applicant requests fees in the amount of $4,770.00.

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?

© 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 preparation of motions and general case administration. 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 8.6 hours in this category. Applicant appeared at status conferences, monitored the sale of real property, communicated with the Debtor, and requested release of funds.

Accounting and Auditing: Applicant spent 7.3 hours in this category. Applicant communicated with the Debtor regarding collection of monthly payments, and issuing the monthly payments to creditors.

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**
Gary R. Farrar	15.9	$300.00	$4,770.00
Total Fees for Period of Application			$4,770.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fourth and Final Fees in the amount of $4,770.00 are approved

pursuant to 11 U.S.C. § 330 and authorized to be paid/ Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and allowed by the court.

Applicant is allowed, and the Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $4,770.00

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 Gary R. Farrar ("Applicant"), Plan Administrator for Mark Anthony Garcia and Angela Marie Garcia, the Chapter 11 Debtor's, ("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 Gary R. Farrar is allowed the following fees and expenses as a professional of the Estate:
>
> Gary R. Farrar, Professional employed by the Chapter 11 Debtor
>
> Fees in the amount of $4,770.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

10. 21-90061-E-7 **JOSE JACQUEZ**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-3-21 [11]

Final Ruling: No appearance at the March 25, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), creditors, and Chapter 7 Trustee as stated on the Certificate of Service on March 5, 2021. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $338.00 due on February 17, 2021.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

11. 20-90574-E-7 BLF-3 11 thru 13 | **KB LINES, INC Seth Hanson** | **MOTION FOR ADMINISTRATIVE EXPENSES 2-16-21 [21]**

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Gary R. Farrar ("Movant") requests payment of administrative expenses in the amount of $800.00 for providing the estate's tax obligations for the period ending December 31, 2020 to the Franchise Tax Board ("FTB").

DISCUSSION

Movant argues that payment to the Internal Revenue Service and the Franchise Tax Board is appropriate because it is a tax liability incurred by the estate.

Section 505(b)(2) of the Bankruptcy Code accords that the trustee "may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination" to the Internal Revenue Service and the Franchise Tax Board.

Section 503(b)(1)(B) of the Bankruptcy Code states that "(b) after notice and a hearing, there shall be allowed administrative expenses ..., including - (1) ... (B) any tax - (I) incurred by the estate ..."

Moreover, Section 503(b)(1)(D) of the Bankruptcy Code states a governmental unit shall not be required to file a request for payment as a condition for its claim to be authorized as an administrative claim.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing tax expenses for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $800.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Gary R. Farrar ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay Gary R. Farrar $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

12. 20-90574-E-7 BLF-4

KB LINES, INC
Seth Hanson

MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, LLP, ACCOUNTANT(S)
2-16-21 [25]

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Accountant, creditors, and Office of the United States Trustee on February 16, 2021. 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.

Ryan, Christie, Quinn & Horn, LLP, 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 August 20, 2020, through March 25, 2021. The order of the court approving employment of Applicant was entered on September 9, 2020. Dckt. 18. Applicant requests fees in the amount of $2,675.00 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 preparing tax documents, corresponding with state and federal tax authorities, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.6 hours in this category. Applicant reviewed list of creditors for conflicts of interest, attended telephone conferences, reviewed employment application, and prepared the instant application.

Tax Return Preparation: Applicant spent 8.5 hours in this category. Applicant reviewed transactional activity, reviewed historic tax returns, communicated with Debtor's accountant regarding returns, compiled financial data, and prepared federal and state tax returns.

Correspondence: Applicant spent .6 hours in this category. Applicant corresponded with federal and state tax authorities representatives for prompt audit determination and communicated with Trustee.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Ryan, Christie, Quinn & Horn, LLP	10.7	$250.00	$2,675.00
Total Fees for Period of Application			$2,675.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,650.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 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 $2,675.00

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 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 Ryan, Christie, Quinn & Horn, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $2,675.00
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and 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.

13. 20-90574-E-7 BLF-5

KB LINES, INC
Seth Hanson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
2-16-21 [31]

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on February 16, 2021. 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.

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

Fees are requested for the period August 20, 2020, through March 25, 2021. The order of the court approving employment of Applicant was entered on September 9, 2020. Dckt. 17. Applicant requests fees in the amount of $3,465.00 and costs in the amount of $64.85.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include preparing motions, hiring accountants, and investigating property value. The Estate has $22,116.98 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 2.8 hours in this category. Applicant prepared fee agreement and employment application, and anticipates attending hearing on the fee application.

Investigation of Ownership and Value of Estate Property: Applicant spent 1.8 hours in this category. Applicant conducted lien search to determine any such liens on personal property and conveyed results to the Trustee.

Employment of Accountant: Applicant spent 5.3 hours in this category. Applicant reviewed tax documents, prepared and filed a motion to pay tax obligations, prepared employment application, and anticipates attending the hearing on motion to pay tax obligations and accountant fee application.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris L. Bakken, Partner	9.9	$350.00	$3,465.00
Total Fees for Period of Application			$3,465.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $64.85 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$32.45
Copies	$0.10	$32.40
Total Costs Requested in Application		$64.85

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,465.00 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 $64.85 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$3,465.00
Costs and Expenses	$64.85

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $3,465.00
Expenses in the amount of $64.85,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and 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.

14. 20-90680-E-7 TMO-1 | **ALVARO/JAZMIN HERNANDEZ** | **Mark O/Toole** | **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** | **2-2-21 [24]**

Final Ruling: No appearance at the March 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 having been granted on March 11, 2021, and the court's order entered on March 17, 2021 (Dckt. 39), **the matter is removed from the calendar.**