UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 10, 2025 at 10:30 a.m.

1.	**25-21280-E-13** **JBR-2**	**ADRIANA GARCIA** **Jennifer Reichhoff**	**MOTION TO EXTEND AUTOMATIC STAY O.S.T.** **4-2-25 [11]**

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 and all creditors and parties in interest on April 2, 2025. By the court's calculation, 8 days' notice was provided. The court set the hearing for April 10, 2025.

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 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Adriana Garcia ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 24-23678) was dismissed on February 18, 2025, after the court granted Debtor's *ex parte* Motion to Dismiss her own case. *See* Order, Bankr. E.D. Cal. No. 24-23678, Dckt. 54, February 18, 2025. 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 for the purpose of paying for debtor's mortgage loans, association dues and unsecured debts, which is necessary for the debtor's reorganization. Mot. 1:22-24. Debtor explains that she requested dismissal of her prior case as she was expecting monetary assistance from her friend, and that friend was ultimately unable to provide the assistance. Decl. ¶¶ 3, 4. Debtor is now filing again to reorganize her debts in good faith.

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

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

A. Why was the previous plan filed?

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

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

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

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

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

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

The Motion to Extend the Automatic Stay filed by Adriana Garcia ("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 on an interim basis, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court, through and including **xxxxxxx**.

IT IS FURTHER ORDERED that the final hearing on this Motion shall be conducted at **xxxxxxx**. Debtor shall provide notice of the continued hearing on or before **xxxxxxx**, with written oppositions, if any, filed and served on or before **xxxxxxx**; and replies, if any, filed and served on or before **xxxxxxx**.

2.	**22-20975-E-7** **DNL-13**	**LINDA MIZOGAMI** **Eric Schwab**	**MOTION FOR COMPENSATION FOR SUSAN K. SMITH, CHAPTER 7 TRUSTEE(S)**
	Items 2 thru 4		**3-5-25 [160]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and all creditors and parties in interest on March 5, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Susan K. Smith, the Chapter 7 Trustee, ("Applicant") for the Estate of Linda Kaori Mizogami ("Debtor"), makes a Request for the Allowance of Fees and Expenses in this case. The Application requests $38,585.60 in fees and $118.03 in expenses, totaling $38,703.63.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

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

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

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

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

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

Benefit to the Estate

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include liquidating a single-family residence and deferred compensation. The Estate has funds on hand in the approximate amount of $171,495.21. Mot. 3:5. Proposed compensable disbursements in the case total $706,712.03. *Id.* at 3:14.

In her Declaration, the Trustee describes the tasks undertaken as:

1. Trustee reviewed the Schedules, Statement of Financial Affairs, conducted the 341 Meeting of Creditors, and investigated assets and liabilities of the Bankruptcy Estate. Dec., ¶ 3; Dckt. 162.

2. The assets of the Bankruptcy Estate administered by the Trustee (as identified in the Declaration) were:

    a. A single family residence.

        (1) Extensive time and expense in clean up was required. (The clean up and scope of work is not described.)

        (2) Clearing title was complicated by multiple tax liens and "the evolving state of related law." (It is not stated what actions of the Trustee were required to address the tax liens or why "the evolving state of related law" presented an impediment.)

    b. Deferred compensation.

        (1) This asset was recovered by the avoidance of a pre-petition enforcement of judgment activity against the Debtor. (This action is not identified in the Declaration.

    Id.; ¶ 4.

3. The Declaration includes a chart of various motions and pleadings (such as Motion to Employ Counsel, Application to Employ Broker, Applications for Final Compensation, and the like), most of which read as work done by Trustee's counsel. *Id.*; ¶ 5.

The Declaration does not not explain what activities that the Trustee engaged in for such motions or in the administration of the assets in this Bankruptcy Estate.

In reviewing the court's Order authorizing the sale of the Residence Property free and clear of liens, this is not the "standard" sale order. Rather, it orders the sale to be free and clear of twelve (12) different tax liens, the payment of three tax liens (non-penalty portion of tax obligations) through escrow, retention of the penalty portion of the secured claims for the benefit of the Bankruptcy Estate, and then for any remaining amounts to be held subject to junior liens. Order; Dckt. 125.

In the Trustee's Declaration in support of the Motion to sell, some of the clean up from the residence property is described, with the Trustee testifying:

> 7. I have personally inspected the K Street Property, which is in a severe state of disrepair that will require any sale to be on an as-is where-is basis, cash only, without inspection clearances. I have made extraordinary advances, aggregating $8,465.13 (collectively "Cleanup Costs"), to pay for: (a) the removal of 108 cubic yards of personal effects and debris ($5,200.00); (b) locksmith services ($565.130); (c) removal of 11 appliances and a rug ($700.00); and (d) removal of overgrown trees, dead limbs, wood branches, weeds, and bushes, and mow and weed eat ($2,000.00). A copy of an itemization of the Cleanup Costs is filed herewith as Exhibit D.

Dec., ¶ 7; Dckt. 108.

The Trustee's Declaration makes reference to the avoidance of pre-petition enforcement of judgment activity against the Debtor. *Id*.; ¶ 4. This appears to have been accomplished by a Stipulation that the Trustee obtained with farmers Group, Inc. and Farmers Insurance Exchange. Stip.; Dckt. 124. It appears that though no Motion to Approve a stipulation or settlement was filed, the court promptly entered the order proposed by counsel for the Trustee. Order; Dckt. 126.[Fn.1.]

FN. 1. To be fair on the substance of the Stipulation (as opposed to the procedural requirements for obtaining an order of the court), the Trustee and her counsel were able to have all the lien rights and interests of the Farmers settling parties avoided pursuant to 11 U.S.C. § 547 and transferred to the Bankruptcy Estate pursuant to 11 U.S.C. § 551 (which is the automatic statutory effect of the avoidance of a lien). There was nothing of substance that the Chapter 7 Trustee was giving up any rights or interests of the Bankruptcy Estate.

Trustee's counsel has filed it's Final Fee Application, which includes the same chart of various motions and pleadings filed that is listed in the Trustee's Declaration. Dckt. 165. Trustee's counsel is requesting $46,791.50 in fees, which is for 117.40 hours billed. *Id*.; § A, p. 3.

As the Trustee and Counsel are aware, the Bankruptcy Code provides for a percentage fee schedule for Chapter 7 trustee, which may not exceed certain percentage tiers, which compensation for the trustee is treated as a "commission." 11 U.S.C. §§ 362(a), 330(a)(7). Further, as the judges in this District have addressed, the percentage fee amounts must be reasonable, and not to exceed the fee percentage caps.

See, *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014), by the Hon. Christopher M. Klien, with concurrences by the Hon. Michael McManus, Hon. Thomas Holman, Hon. Richard Lee, Hon. Ronald Sargis, and Hon. Fredrick Clement, Bankruptcy Judges in the Eastern District of California.

In the conclusion to the *Scoggins* Decision, the Hon. Christopher M. Klein states:

> The effect of § 330(a)(7) requiring that a court "treat" trustee compensation as a "commission" operates to create a rebuttable presumption that the maximum fee provided by § 326(a) is "reasonable" for purposes of § 330 and § 330(a)(1)(A). The court remains entitled, pursuant to § 330(a)(2), to award less than the amount requested. The presumption in favor of the maximum commission is rebutted, among other potential reasons, if the fee is unreasonably disproportionate.
>
> A formal fee application supported by time records and narrative statement of services (in lieu of a short-form application) is required for all trustee fee requests: (1) of $10,000 or more; (2) all cases in which the trustee seeks fees exceeding the amount remaining for unsecured priority and general claims; (3) all cases involving a "carve-out" or "short sale"; (4) all cases where the trustee operates a business; and (5) any case in which the court orders a formal fee application.

In re Scoggins, 517 B.R. at 227.

Eastern District of California Local Bankruptcy Rule 2016-2 specifies the procedure for a Chapter 7 trustee seeking compensation.

LOCAL RULE 2016-2
Compensation of Chapter 7 Trustees

> a) Motion Procedure. Every application for compensation of a Chapter 7 trustee in the categories set forth in paragraph (b) shall be presented by motion noticed and set for hearing pursuant to LBR 9014-1. Such application shall be supported by a narrative statement of the trustee's services and such other supporting documentation as may be appropriate to satisfy the trustee's burden of persuasion.
>
> (b) Categories. The procedure specified in paragraph (a) shall be followed for requests that satisfy any of the following criteria:
>
> 1) Fee requests seeking $10,000.00, or more;
>
> 2) Cases in which the trustee seeks fees exceeding the amount remaining to pay unsecured priority and general unsecured claims;
>
> 3) Cases in which there is a "carve out" for the estate or a "short sale";
>
> 4) Cases where the trustee has operated the business of the debtor; or
>
> 5) Cases in which the court specifically orders such a fee application.

Here, the Trustee's Declaration states little more than that the Trustee's Counsel filed a number of motions and obtained a number of orders (many merely for hiring or paying professionals).

However, at the hearing **xxxxxxx**

~~The court finds the services were beneficial to Client and the Estate and were reasonable.~~

FEES REQUESTED
Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $656,712.03	$32,835.00
3% of the balance of $0	$0
Total First Final Fees Requested	$38,585.60

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $118.03 pursuant to this application. Applicant's total expenses were $8574.16 with $8,456.13 of that amount already paid, leaving the difference of $118.03 to be paid pursuant to this Application. Ex. A at 2, Docket 163.

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Trustee effectively used appropriate rates for the services provided. First and Final Fees in the amount of $38,585.60 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $118.03 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.

In this case, the Chapter 7 Trustee currently has $171,495.21 of unencumbered monies to be administered. The Chapter 7 Trustee liquidated property of the Estate, including a home and Debtor's deferred compensation. Applicant's efforts have resulted in proposed compensable disbursements in the case totaling $706,712.03.

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

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

Fees	$38,585.60
Costs and Expenses	$118.03

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 Susan K. Smith, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Susan K. Smith is allowed the following fees and expenses as trustee of the Estate:
>
> Susan K. Smith, the Chapter 7 Trustee
>
> ~~Fees $38,585.60~~
> ~~Costs and Expenses $118.03,~~
>
> ~~**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.~~

3. 22-20975-E-7 DNL-12 | **LINDA MIZOGAMI** Eric Schwab | **MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S)** **3-5-25 [155]**

Final Ruling: No appearance at the April 10, 2025 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 all creditors and parties in interest on March 5, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The 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.

Susan K. Smith, the Chapter 7 Trustee ("Applicant") for the Bankruptcy Estate of Linda Kaori Mizogami, makes a First and Final Request for the Allowance of Fees and Expenses in this case for the Estate's accountant, Bachecki, Crom & Co., LLP ("BCC").

Fees are requested for the period September 13, 2023 through and including February 26, 2025. The order of the court approving employment of Applicant was entered on October 1, 2023. Dckt. 142. Applicant requests fees in the amount of $11,315.00 and costs in the amount of $93.81.

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 the following:

> BCC reviewed and prepared an analysis of the IRS secured claim and assessed avoidable penalty and related interest amounts. BCC corresponded with the Trustee and Counsel regarding the IRS claim. BCC prepared a tax analysis for the sale of the residence and assessed tax reporting of deferred receipts. BCC prepared the Federal and California estate income tax returns for the fiscal years ended November 30, 2023 and 2024, and the final short period returns for the fiscal period ended February 28, 2025. BCC also responded to the IRS notice of tax due regarding the 2023-year end return.

Mot. 2:17-23.

The court finds the services were beneficial to the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

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**
Jay D. Crom	1	$650.00	$650.00
Jay D. Crom	1.8	$630.00	$1,134.00
Virginia Huan-Lau	3.5	$475.00	$1,662.50
Virginia Huan-Lau	3.7	$460.00	$1,702.00
Jason Tang	5.4	$375.00	$2,025.00
Jason Tang	10.9	$385.00	$4,196.50
Total Fees for Period of Application			$11,315.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $93.81 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
PACER	----------	$29.20
Copy Charges		$13.20
Postage		$50.17
Total Costs Requested in Application		$93.81

FEES AND COSTS & EXPENSES ALLOWED

Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $11,315.00 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 $93.81 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.

Bachecki, Crom & Co., LLP is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$11,315.00
Costs and Expenses	$93.81

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 Susan K. Smith, the Chapter 7 Trustee ("Applicant") for the Bankruptcy Estate of Linda Kaori Mizogami, on behalf of the Estate's accountant, Bachecki, Crom & Co., LLP ("BCC") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bachecki, Crom & Co., LLP ("BCC") is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP ("BCC"), Professional employed by the Chapter 7 Trustee

Fees	$11,315.00
Costs and Expenses	$93.81,

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

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

4. **22-20975-E-7** **DNL-14**

LINDA MIZOGAMI
Eric Schwab

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
3-5-25 [165]

Final Ruling: No appearance at the April 10, 2025 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 and all creditors and partes in interest on March 5, 2025. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The 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.

Susan K. Smith, the Chapter 7 Trustee ("Applicant," "Trustee") for the Bankruptcy Estate of Linda Kaori Mizogami, makes a First and Final Request for the Allowance of Fees and Expenses in this case for the Trustee's counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC").

Fees are requested for the period January 9, 2023 through March 3, 2025. The order of the court approving employment of Applicant was entered on January 18, 2023. Dckt. 67. Applicant requests fees in the amount of $46,791.50 and costs in the amount of 519.92.

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 asset marketing and sales, case administration litigation, and other matters as discussed in more detail below. The Estate has $171,495.21 of unencumbered monies to be administered as of the filing of the application. Mot. 3:2. Trustee anticipates that, after payment of Chapter 7 administrative expenses, there will be about $74,071.35 to disburse to unsecured creditors. *Id.* at 3:7-8. The court finds the services were beneficial to the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Marketing & Sales: DNLC expended 4.0 hours, which included communicating with Trustee regarding sale preparation and motion papers regarding the same.

Case Administration: DNLC expended 3.4 hours, which included communications related to possible preferences, exemption objections, liquidation, tax, disbursements and fee applications.

Litigation & Contested Matters: DNLC expended 42.80 hours, which included preparing pleadings related to transfer avoidance, tax liens, exemptions, settlement, discharge, sale, disbursement, and deferred compensation.

Asset Analysis & Recovery: DNLC expended 15.30 hours, which included research of the above-described litigation and contested matters, investigation and review of factual material, and related communications with interested parties.

Asset Disposition: DNLC expended 1.10 hours, which included sale and escrow follow up.

Fee/Employment Applications: DNLC expended 15.20 hours, which included preparing the applications to employ DNLC, professionals and preparing fee applications.

Tax Issues: DNLC expended 3.40 hours, which included communication with interested parties, and review of estate income tax returns.

Claims Administration and Objections: DNLC expended 6.40 hours, which included negotiating stipulations resolving the possible preference payments and lien extent and priority.

Settlement/Non-Binding ADR: DNLC expended 23.90 hours, which included negotiating stipulations and settlement agreements resolving disputes involving rights to payment on preferences, drafting said stipulations, and preparing motions to approve same.

Discovery: DNLC expended 0.40 hours, drafting a 2004 exam application.

Tax: DNLC expended 1.50 hours, which included additional tax related work.

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**
J. Russell Cunningham	12.50	$550.00	$6,875.00
J. Russell Cunningham	61.10	$495.00	$30,244.50
Benjamin C. Tagert	4.7	$325.00	$1,527.50
Benjamin C. Tagert	6.5	$275.00	$1,787.50
Mikayla E. Kutsuris	32.6	$195.00	$6,357.00
Total Fees for Period of Application			$46,791.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $519.92 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Travel and recording	----------	$14.30
Photocopies	$0.10	$33.50
Mailing Costs		$99.37
Court Costs		$372.75
Total Costs Requested in Application		$519.92

FEES AND COSTS & EXPENSES ALLOWED
Fees
Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $46,791.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution [n a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $519.92 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.

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

Fees $46,791.50
Costs and Expenses $519.92

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 Susan K. Smith, the Chapter 7 Trustee ("Applicant," "Trustee") for the Bankruptcy Estate of Linda Kaori Mizogami, on behalf of Trustee's counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees	$46,791.50
Costs and Expenses	$519.92,

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

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

5. 24-24542-E-11 UST-1 | MONALISA SILAPAN Mark Wolff | MOTION FOR APPOINTMENT OF A PATIENT CARE OMBUDSMAN 3-12-25 [123]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 11 Subchapter V Trustee on March 12, 2025. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Appointment of a Patient Care Ombudsman 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 is granted and a patient ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business shall be appointed.

Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. Trustee"), files this Motion to have the court appoint a patient care ombudsmen in the case. U.S. Trustee states:

1. Debtor in Possession Monalisa Silapan is operating two care homes, The Care Group LLC and Best Care LLC, as hospice and medical care facilities. Mot. 4:24-5:5.

2. Therefore, the two LLCs are health care businesses as defined by 11 U.S.C. § 101(27A).

3. Factors are present here that show appoint of a patient care ombudsman is necessary, including Debtor in Possession's admitted gambling history and issues. *Id.*

U.S. Trustee submits the Declaration of Shane Bharat in support. Declaration, Dckt. 125.

Debtor in Possession's Non-Opposition

Debtor in Possession filed a Non-Opposition on March 27, 2025. In her Non-Opposition, Debtor in Possession states that she is not running health care businesses, but she does not oppose the Motion.

DISCUSSION

Congress provides for a patient care ombudsman in 11 U.S.C. § 333(a)(1), which states:

> If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

The definition of a "health care business: is provided in 11 U.S.C. § 101(27A) as (emphasis added):

> (27A)The term "health care business"—
>
> (A)means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—
>
> (i)the diagnosis or treatment of injury, deformity, or disease; and
>
> (ii)surgical, drug treatment, psychiatric, or obstetric care; and
>
> (B)includes—
>
> (i)any—
>
> (I)general or specialized hospital;
>
> (II)ancillary ambulatory, emergency, or surgical treatment facility;
>
> (III)**hospice**;
>
> (IV)home health agency; and
>
> (V)other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and
>
> (ii)any long-term care facility, including any—
>
> (I)skilled nursing facility;
>
> (II)intermediate care facility;

> (III)**assisted living facility**;
>
> (IV)**home for the aged**;
>
> (V)domiciliary care facility; and
>
> (VI)health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

11 U.S.C. § 333(a)(1) states the court shall appoint an ombudsman, unless the court decides otherwise. According to Collier,

> Facts that warrant a decision not to appoint an ombudsman could include that the facility's patient care is of high quality, that the debtor has adequate financial strength to maintain high-quality patient care, that the facility already has an internal ombudsman program in operation or that the situation at the facility is adequately monitored already by federal, state, local or professional association programs so that the ombudsman would be redundant.

3 COLLIER ON BANKRUPTCY ¶ 333.02(2). Bankruptcy courts have largely adopted a nine-factor test in determining whether appointment of a patient care ombudsman is necessary. These factors are,

1. The cause of the bankruptcy;
2. The presence and role of licensing or supervising entities;
3. Debtor's past history of patient care;
4. The ability of the patients to protect their rights;
5. The level of dependency of the patients on the facility;
6. The likelihood of tension between the interests of the patients and the debtor;
7. The potential injury to the patients if the debtor drastically reduced its level of patient care;
8. The presence and sufficiency of internal safeguards to ensure appropriate level of care; and
9. The impact of the cost of an ombudsman on the likelihood of a successful reorganization.

Id.; *see In re Valley Health System*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008) (quoting *In re Alternate Family Care*, 377 B.R. 754, 756 (Bankr. S.D. Fla. 2007). No one factor of this test is determinative; instead, "courts decide the weight to give each factor at their own discretion." 3 COLLIER ON BANKRUPTCY ¶ 333.02(2).

Once the court determines a patient care ombudsman shall be appointed, Fed. R. Bankr. P. 2007.2 states:

(c) Notice of Appointment. If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment, including the name and address of the person appointed. Unless the person appointed is a State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

DISCUSSION

As an initial matter, it is clear that the uncontroverted 341 testimony of Debtor shows that these LLCs operate as patient care facilities. *See* Decl. ¶ 3, Docket 125. Such businesses are clearly defined as health care businesses under 11 U.S.C. § 101(27A). Debtor in Possession, in explaining how this case is not a health care business case, at the hearing, **xxxxxxx**

In applying the factors in this case, the court finds appointment of an ombudsman is necessary. There were questions surrounding the filing of this case, including who owned the LLCs as a purchase agreement was partially executed just prior to filing. Moreover, there were early reports that the LLCs were not treating patients, and it appears now the LLCs are fully operational. As U.S. Trustee notes, Debtor in Possession has a history of gambling issues that also supports the appointment of an ombudsman. Debtor in Possession also filed a Non-Opposition in the case.

Therefore, the court determines that appointment of an ombudsman is necessary to ensure a high level of patient care.

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 Appointment of a Patient Care Ombudsman filed by Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted pursuant to 11 U.S.C. § 333(a) and the U.S. Trustee shall appoint a patient care ombudsman in the case.

6.	**24-20145-E-7 GMR-2**	**DONALD DUPONT Eric Schwab**	**MOTION FOR ADMINISTRATIVE EXPENSES 3-3-25 [235]**

Items 6 thru 8

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, creditors that have filed claims, and other parties in interest on March 3, 2025. By the court's calculation, 38 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Administrative Expenses is granted.

Chapter 7 Trustee Geoffrey Richards ("Trustee") requests payment of administrative expenses in the amount of $750 for income taxes incurred by the Estate that became due and owing post-petition to the Franchise Tax Board ("FTB").

DEBTOR'S OPPOSITION

Donald Fred DuPont, Jr. ("Debtor") filed, in *pro se*, an Opposition. Docket 239. Mr. DuPont is represented by counsel, but filed concurrently with this Motion is a Motion to Substitute out Debtor's current counsel and substitute Debtor in the case in *pro se.*

Debtor opposes the Motion as he believes paying taxes is not fair when Debtor's creditors are not being paid on their claims. Debtor feels that the court or other parties have misrepresented how this process works and believes the distribution of money in the case is not fair.

At the hearing, **xxxxxxx**

DISCUSSION

Section 503(b)(1)(B) of the Bankruptcy Code states:

> (b)After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—
>
> (B)any tax—
>
> (i)incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
>
> (ii)attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case. . .

What is before the court is a simple request to pay income taxes that derive from selling property of the Estate. Debtor opposes, arguing paying the tax is not fair, at least in part based on the price of the sale of Debtor's interest in Northwest Development LLC. *See* Docket Control No. BLF-2. The Estate sold Debtor's interest for $39,500, which was not opposed by Debtor.

Moreover, even a cursory view indicates the sale was reasonable. From a $1.475 million sale, after costs of sale and paying the liens, there would be approximately $463,540 in projected net sales proceeds. The 60% owners of Northwest Development LLC had advanced approximately $468,158 (the number used at the time the Motion to Sell was brought), which the co-owners had asserted their right to be repaid off the top of the proceeds. Reimbursing the co-owners for their advances exhausts all of the equity. Therefore, selling Debtor's interest for $39,500 was more than reasonable.

Trustee has demonstrated that the expenses are necessary, the court finding that the sale provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the FTB its administrative expenses in the amount of $750.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Chapter 7 Trustee Geoffrey Richards ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the California Franchise Tax Board $750 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1)(B).

7. 24-20145-E-7 DONALD DUPONT
Eric Schwab

MOTION TO SUBSTITUTE ATTORNEY
4-1-25 [240]

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.

Debtor filed the Motion in *pro se* and did not notice the hearing. The court set the hearing for April 10, 2025. Docket 242.

The Motion to Substitute Attorney was 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 substitute Attorney is xxxxxxx.

Debtor Donald DuPont, Jr. ("Debtor"), while represented by counsel Eric Schwab, Esq., filed this Motion in *pro se* requesting the court substitute Debtor in to represent himself. Local Bankruptcy Rule 2017-1(h) sets forth the standard in substitution. That rule states:

> (h) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court.

As Debtor is attempting to substitute himself in, and Debtor is not an attorney, the court may not grant a substitution. Counsel for Debtor would need to request withdrawal pursuant to Local Bankruptcy Rule 2017-1(e) and the Rules of Professional Conduct of the State Bar of California.

On April 3, 2025, Eric Schwab, Esq., the Debtor's counsel of record filed his Declaration in Response to this Motion. Dec.; Dckt. 244. In it, counsel states that he has received the Motion and does consent to substitution of Debtor in *pro se*, *i.e.* the withdrawal of Mr. Schwab as counsel for Debtor in this Bankruptcy Case. Counsel makes reference to the Debtor's several professional licenses and real world experience, as well as Debtor representing himself in other matters in the District Court and the Superior Court.

At the hearing, **xxxxxxx**

Motion to Close Bankruptcy Case

On April 7, 2025, the Debtor filed, in *pro se*, a Motion to Close Chapter 7 Case, Following Order of Discharge. Dckt. 247. He states that the sale of the Estate's interest in Northwest Development, LLC closed eight months earlier, but there have been no distributions or other activity in this Bankruptcy Case.

The Docket in this Bankruptcy Case reflects that Debtor was granted his discharge on August 8, 2024. Dckt. 201. On November 11, 2024, the Chapter 7 Trustee filed a Report of Sale, stating that the Trustee received the $39,500.00 for the sale of the Estate's interest in Northwest Development, LLC on August 5, 2024.

On December 10, 2024, the court entered an Order for the Abandonment of the Estate's interest in DuPont Investment, LLC, d/b/a Rock Hill Winery to the Debtor. Dckt. 232.

The Trustee filed a Motion for Allowance of Administrative Expense for the 2024 taxes owed to the California Franchise Tax Board in the amount of $750. Motion; Dckt. 235.

At the hearing, **xxxxxxx**

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

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

The Motion to Substitute Attorney filed by Debtor Donald DuPont, Jr. ("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 **xxxxxxx**.

8. 24-20145-E-7 CAE-1 | **DONALD DUPONT** | **STATUS CONFERENCE RE: VOLUNTARY PETITION 1-16-24 [1]**

Debtor's Atty: Eric John Schwab

Notes:
Set by order filed 4/2/25 [Dckt 242]. Status Conference to be conducted in conjunction with other matters on the calendar for this case.

The Status Conference is xxxxxxx

APRIL 10, 2025 STATUS CONFERENCE

Debtor Donald DuPont, Jr. commenced this Voluntary Bankruptcy Case and received his Chapter 7 Discharge on August 8, 2024. Debtor's Chapter 7 counsel of record is Eric Schwab, Esq.

On April 1, 2025, Debtor filed a Motion for Substitution in which he requests that the court substitute the Debtor in *pro se* in the place of current counsel of record. Dckt. 240. In the Motion, Debtor states that this is with the consent of his current counsel of record.

As provided in Local Bankruptcy Rule 2017-1(e), when the withdrawal of counsel would leave a party in *pro se*, then such substitution may be authorized by the court only after a noticed hearing. Though it is the Debtor who is initiating this change, it is still subject to the noticed hearing requirement.

Status Report Request

On April 1, 2024, the Debtor, in *pro se*, filed a pleading titled "Declaration [of Debtor] in Support of Request For Status of Estate Administration and Distribution." Dckt. 241. In the Declaration the Debtor recounts the sale of Bankruptcy Estate's 40% interest in real property, with $39,500.00 in sales

proceeds being received by the Trustee. *Id.*; ¶ 2. The Debtor states that he has not received any information about these proceeds or the use of the monies to pay administrative expenses and priority unsecured claims. *Id.*; ¶ 3.

Debtor states in the Declaration that he is requesting that he be informed of the status of these funds and administration of the case, the sale of the Bankruptcy Estate's interest having been made in July 2024. *Id.*; ¶ 4. The Debtor expressly states that he is not making any accusations of impropriety, but is seeking to have transparency as to the process and bring this Case to a close with the paying of his creditors. *Id.*; ¶ 5.

In reviewing the Docket for this Bankruptcy Case, the court notes that on March 3, 2025, Geoffrey Richard, Chapter 7 Trustee, filed a Motion to pay an administrative expense to the Franchise Tax Board in the amount of $750.00 for taxes incurred by the Bankruptcy Estate. Dckt. 235. Debtor, in *pro se*, filed an Opposition to the Motion, stating grounds including "serious concerns regarding the mismanagement and liquidation of a key estate asset and the failure to distribute proceeds to disclosed priority unsecured creditors." Dckt. 239. The attachment to the Opposition includes questioning the sale of the Bankruptcy Estate's interest for $39,500.00 in light of the recent sale of the real property, for which the Bankruptcy Estate held the 40% interest that was sold in July 2024, for more than $1,400,000.00.

The court has reviewed the Motion to Sell the Bankruptcy Estate's 40% interest in Northwest Development, LLC, which was the owner of the real property that was sold for more than $1,400,000.00. Motion; Dckt. 117. In the Motion, the projected net sales proceeds were stated to be approximately $463,540.44. *Id.*; ¶ 7. However, the Motion further states that the co-owners of Northwest asserted the right to be reimbursed for their contributions to the purchase price and monthly mortgage payments, which total $222,118.00 for Mr. Chiappe and $246,040.00 for Mrs. Silver. *Id.* Also, that there was a pending foreclosure sale on the Property.

The hearing on the Motion for Allowance of Administrative Income Tax Claims (DCN: GMR-2) is set for 10:30 a.m. on April 10, 2025.

At the Status Conference **xxxxxxx**

9.	**24-22667-E-7** **MJP-4**	**THU HUYNH / HONG VUONG** **Michael Primus**	**MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.** **3-5-25 [51]**

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.

The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on March 10, 2025. By the court's calculation, 31 days' notice was provided. 28 days' notice is required. Movant checked boxes B. and B. 1. B. which require an attachment containing the list of the named addresses and parties served. No attachment is included. It is unclear who has been served, it not appearing Creditor was served.

At the hearing, **XXXXXXX**

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

~~The Motion to Avoid Judicial Lien is granted.~~

PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Declaration and list of Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is

not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

THE MOTION

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, Thu Yen Huynh and Hong Duy Vuong ("Debtor") commonly known as 2901 Highgate Lane Tracy, CA 95377 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,831.04. Exhibit A, Dckt. 53. An abstract of judgment was recorded with San Joaquin County on August 17, 2023, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $600,000.00 as of the petition date. Schedule A at 10, Docket 1. The unavoidable consensual liens that total $232,888 as of the commencement of this case are stated on Debtor's Amended Schedule D. Am. Schedule D at 8, Docket 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $400,000 on Amended Schedule C. Am. Schedule C at 4, Docket 14.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Thu Yen Huynh and Hong Duy Vuong ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for San Joaquin County Case No. STK-CV-LCCR-2022-9192, recorded on August 17, 2023, Document No. 2023-065199, with the San Joaquin County Recorder, against the real property commonly known as 2901 Highgate Lane Tracy, CA 95377, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

10. 24-25180-E-11 RFL-8 | **KAMALJIT KALKAT** **Robert Marticello** | **MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY INTERESTED PARTY DIAMOND K LLC, DEBTOR KAMALJIT KAUR KALKAT 3-14-25 [101]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice Office of the United States Trustee on March 14, 2025. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion for an Order Extending the Exclusivity 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. At the hearing, ----------.

The Motion for an Order Extending the Exclusivity Period is granted.

Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K"), debtors and debtors in possession ("Debtors in Possession"), move this court for an Order extending the exclusivity period for filing a Chapter 11 Plan pursuant to 11 U.S.C. § 1121(d). Debtors in Possession seek to (a) extend the exclusive period to file a plan of reorganization for 90 days from March 14, 2025, to June 12, 2025, and (b) extend the exclusive period to solicit acceptances of the plan for 90 days from May 13, 2025, to August 11, 2025.

The exclusivity period to file a Plan ends on March 14, 2025, which is 120 days from filing the petition. The Debtors in Possession have up to 180 days to solicit acceptances of a filed Plan, which would end on May 13, 2025. Debtors in Possession seek to extend these periods for cause. Specifically, Debtors in Possession argues cause exists to extend the exclusivity period as there are ongoing negotiations that would determine the contents of a proposed Plan. Mot. 4:20-24. Debtors in Possession argue the case is being diligently prosecuted and the short extension will allow for ample time to develop a viable Plan of reorganization.

DISCUSSION

11 U.S.C. § 1121 provides for the exclusivity period and states:

(a)The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b)Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c)Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

(1)a trustee has been appointed under this chapter;

(2)the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3)the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d)

(1)Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) 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.

(2)

(A)The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B)The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

Collier's Treatise states on the subject:

The determination of whether cause exists to warrant an extension or reduction of the statutory time periods is fact specific. Cause to extend has been found where the debtor has continually proposed plans and attempted to negotiate with the creditors. Cause has been found not to exist where the debtor's case is not complex, where there has been no progress in arranging financing or where an extension would be fruitless, particularly in the light of previous ineffective extensions of time. It has

> been said that the creditors' loss of confidence in the capability of debtor's management is a factor to consider in determining cause, as is the principal parties' acrimonious relationship.
>
> Several courts have enumerated the following 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. Another court, after reviewing this enumeration, said that the overriding factor is whether terminating the debtor's exclusivity would facilitate moving the case forward.
>
> Some courts have relied on a four-factor test to determine whether cause exists to grant a motion to extend time. The factors are "1) the debtor's use of exclusivity period to force creditors to accept an unsatisfactory or unconfirmable plan; 2) the debtor's delay in filing a plan; 3) gross mismanagement of the debtor's operations; and 4) "acrimonious relations" between the debtor's principals."

7 COLLIER ON BANKRUPTCY ¶ 1121.06[2].

In this case, the court finds cause exists to extend the exclusivity period. Debtors in Possession are engaging in negotiations to propose a viable Plan. This case has not been languishing, these pleadings reflecting a good faith effort to reorganize. Moreover, the length of 90 additional days as the requested extension for exclusivity is not unreasonable. The court grants the Motion pursuant to 11 U.S.C. § 1121(d).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for an Order Extending the Exclusivity Period pursuant to 11 U.S.C. § 1121(d) filed by Kamaljit Kaur Kalkat ("Kalkat") and Diamond K LLC ("Diamond K"), debtors and debtors in possession ("Debtors 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 granted, the court extending the exclusivity period to file a Plan for cause pursuant to 11 U.S.C. § 1121(d).
>
> **IT IS FURTHER ORDERED** that the exclusive period to file a Plan of reorganization is extended for 90 days from March 14, 2025, to June 12, 2025, and the exclusive period to solicit acceptances of the Plan is extended 90 days from May 13, 2025, to August 11, 2025.

11. 24-23395-E-7 BHS-3
ALAN ROSA
Michael Benavides
MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PG&E
3-3-25 [36]

Item 11 thru 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 and all creditors and parties in interest on March 3, 2025. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Nikki B. Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle the Estate's interest in competing claims and defenses arising out of Alan Whitneykemo Rosa's ("Debtor") injuries cause by the Mosquito wildfire in 2022.

Debtor and PG&E have resolved these claims and disputes through mediation, and the award being subject to approval by the court on the following terms and conditions summarized (the full terms of the Settlement are set forth in the Settlement Ledger filed as Exhibit A in support of the Motion, Dckt. 49):

A. The award is in the amount of $125,000 based on Debtor's evacuation from the fire area and loss of personal property, as well as emotional distress;

B. $31,250 of the total award is to go to special counsel fees in prosecuting the claim; and

C. $93,750 of the total award goes to the Estate.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

The proposed settlement of the Claims is part of a settlement reached with PG&E in a mediation. A mediator determined the appropriate compensation for each of the claimant's claims. As is explained by the accompanying Brett Parkinson Declaration, an appeal of the mediator's determination would entail a lengthy process and cause significant delay in the resolution of the Claims. Mem. 4:18-22, Docket 38.

Difficulties in Collection

Trustee is not aware of any difficulties in collection with PG&E.

Expense, Inconvenience, and Delay of Continued Litigation

The process to appeal mediator's determination would entail a lengthy process and cause significant delay in the resolution of the Claims. *Id.* at 5:4-5.

Paramount Interest of Creditors

The proposed Compromise allows the Trustee to collect $93,750.00 net for the bankruptcy estate without the expense, uncertainty, or delay of costly litigation and most importantly, the award will pay all anticipated claims and administrative expenses in full. *Id.* at 5:12-14.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Compromise will allow all claims in the case to be paid in full. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Nikki B. Farris, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise is granted.
>
> **IT IS FURTHER ORDERED** that:
>
> A. The award is in the amount of $125,000 based on Debtor's evacuation from the fire area and loss of personal property, as well as emotional distress;
>
> B. $31,250 of the total award is to go to Parkinson, Benson, Potter, special counsel, for fees in prosecuting the claim; and
>
> C. $93,750 of the total award goes to the Bankruptcy Estate in this Case.
>
> The respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Ledger filed as Exhibit A in support of the Motion (Dckt. 49).

12. 24-23395-E-7 BHS-4 | **ALAN ROSA** **Michael Benavides** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF PARKINSON BENSON POTTER FOR BRETT PARKINSON, SPECIAL COUNSEL(S)** **3-3-25 [43]**

Final Ruling: No appearance at the April 10, 2025 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 and all creditors and parties in interest on March 3, 2025. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Nikki B. Farris, the Chapter 7 Trustee ("Applicant") for the bankruptcy Estate of Alan Whitneykemo Rosa ("Debtor"), makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of Debtor's special counsel, Parkinson, Benson, Potter ("Special Counsel").

Contingency fees are requested related to an award arising out of Debtor's injuries cause by the Mosquito wildfire in 2022. The order of the court approving employment of Applicant was entered on February 18, 2025. Dckt. 35. Applicant requests fees for Special Counsel in the amount of $31,250, which is 25% of the total award of $125,000.

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:

(1) spending substantial time discussing with client his losses and damages,

(2) communicating with client frequently via phone and email to answer his questions and provide status updates,

(3) traveling to see client on several occasions to personally meet with client and perform site inspections,

(4) working with client and experts to obtain all the information necessary to complete the claims,

(5) reviewing and analyzing documentation to substantiate the client's claims and damages.

Mot. 3:12-17.

The Estate has $125,000 of unencumbered monies to be administered as of the filing of the application resulting from Special Counsel's efforts. The court finds the services were beneficial to the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED
Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered for the Estate. Applicant represented Debtor in litigation related to the Mosquito fire, for which Special Counsel and Debtor agreed to a contingent fee of 25% of the gross award. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). $125,000 of net monies (exclusive of these requested fees and costs) was recovered for the Estate.

FEES ALLOWED
Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $31,250 pursuant to 11 U.S.C. § 330 for these services provided to Debtor and the Estate by Special Counsel. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $31,250

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Nikki B. Farris, the Chapter 7 Trustee ("Applicant") for the bankruptcy Estate of Alan Whitneykemo Rosa ("Debtor"), on behalf of Debtor's special counsel, Parkinson, Benson, Potter ("Special Counsel") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Parkinson, Benson, Potter is allowed the following fees and expenses as a professional of the Estate:
>
> Parkinson, Benson, Potter , Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $31,250,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as special counsel for Debtor and the Chapter 7 Trustee.
>
> **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 case.

13. 24-24147-E-11 RLC-6 | **RAYANI HOLDINGS, LLC** **Stephen Reynolds** | **MOTION TO APPROVE PROCEDURES FOR PRIVATE SALE O.S.T. 4-3-25 [83]**

Items 13 thru 16

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 all creditors and parties in interest on April 3, 2025. By the court's calculation, 7 days' notice was provided. The court set the hearing for April 10, 2025.

The Motion to Approve Procedures for a Private Sale 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 Approve Procedures for a Private Sale is granted.

Debtor in Possession Rayani Holdings, LLC (" Debtor in Possession") files this Motion approving sale procedures regarding the sale of the real property consisting of 8.43-acre parcel located at the intersection of Lincoln Road and Sterling Parkway (APN: 021-274-054-000, 021-274-057-000). Debtor in Possession reports it has received a Letter of Intent from a qualified buyer with the ability to close a cash sale in an amount sufficient to pay all creditor claims in this case. Debtor in Possession states it is anticipated that a final Purchase and Sale Agreement will be received early in the week of April 7, 2025. As a condition of that Purchase and Sale Agreement the Buyer has required that the sale procedure not provide for over bidders. Buyer anticipates spending significant sums on due diligence and is unwilling to do so with the risk of an overbid.

Debtor in Possession points out that neither 11 U.S.C. § 363(b) nor Fed. R. Bankr. P. 6004(f)(1) requires a sale be made subject to overbidding.

As Debtor in Possession will be paying all claims in full in the case, the court approves the condition that the sale be approved not subject to overbids. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Procedures for a Private Sale filed by Rayani Holdings, LLC ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Procedures for a Private Sale is granted. The sale of the real property consisting of 8.43-acre parcel located at the intersection of Lincoln Road and Sterling Parkway (APN: 021-274-054-000, 021-274-057-000) shall be conducted not subject to overbidding, so long as all creditors in the case are paid in full.

14. 24-24147-E-11 CAE-1 **RAYANI HOLDINGS, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-17-24 [1]**

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 3/27/25. Continued to be conducted in conjunction with the continued Motion to Dismiss or Convert.

[RLC-6] Motion to Approve Procedures for Private Sale filed 4/3/25 [Dckt 83], set for hearing 4/10/25 at 10:30 a.m. [order granting shortening time filed 4/3/25 (Dckt 87)]

The Status Conference is xxxxxxx

APRIL 10, 2025 STATUS CONFERENCE

At the Status Conference, **xxxxxxx**

MARCH 27, 2025 STATUS CONFERENCE

At the Status Conference, counsel for the Debtor in Possession addressed this being a single asset real estate case, and the property is being actively undertaken.

U.S. Trustee Motion to Dismiss or Convert Case

On January 30, 2025, the U.S. Trustee filed a Motion to Dismiss or Convert this Bankruptcy Case. Dckt. 54. At the March 27, 2025 hearing, the Parties addressed how they intended to move forward with a Plan providing for the liquidation of the single asset. The court has continued the hearing on the Motion to Dismiss to 10:30 a.m. on April 10, 2025.

The Status Conference is continued to 10:30 a.m. on April 10, 2025.

MARCH 5, 2025 STATUS CONFERENCE

The Debtor in Possession filed an updated Status Report on February 19, 2025. Dckt. 64. At the Status Conference, counsel for the Debtor in Possession reported that the property is being actively marketed. The court has authorized the employer of the broker by Debtor. Order; Dckt. 29.

The Status Conference is continued to 11:30 a.m. on March 27, 2025 (Specially Set Day and Time), to be conducted in conjunction with the hearing on the Motion to Approve Disclosure Statement.

NOVEMBER 13, 2024 STATUS CONFERENCE

On October 30, 2024, the Debtor in Possession filed a Status Report. Dckt. 31. The Debtor in Possession notes that this is a single asset real estate case. The real property is located in Lincoln, California. When the Debtor purchased the Property, the seller was paid $1,000,000 cash and a $4,500,000 note secured by the Property.

The Debtor obtained a tentative map to divide the two parcels into six parcels. The Debtor in Possession is now actively marketing the Property for sale, with the court having authorized the employment of the real estate broker. Order; Dckt. 29.

At the Status Conference, counsel for the Debtor in Possession reported that the Property is being actively marketed. For a Plan, it will be for the prompt liquidation of the Property of the Bankruptcy Estate.

Counsel for Rayani Holdings, LLC noted that if the Debtor in Possession is actively working to sell the property, that is good news.

The Status Conference is continued to 2:00 p.m. on March 5, 2025

15. 24-24147-E-11 RLC-4

RAYANI HOLDINGS, LLC
Stephen Reynolds

CONTINUED MOTION FOR ORDER APPROVING DEBTOR'S DISCLOSURE STATEMENT AND FIXING VARIOUS DEADLINES RELATING TO PLAN CONFIRMATION FILED BY DEBTOR RAYANI HOLDINGS, LLC
12-22-24 [44]

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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on December 23, 2024. By the court's calculation, 31 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). Movant is 11 days late of the required notice period. The hearing being continued, the service issue is resolved.

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 Motion to Approve Disclosure Statement is xxxxxxx.

April 10, 2025 Hearing

The court continued the hearing on this Motion to permit Parties to finish up some small tweaks to Plan terms. A review of the Docket on April 7, 2025 reveals Debtor in Possession has not filed any new pleadings related to the Disclosure Statement.

At the hearing, **xxxxxxx**

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: September 17, 2024

Background: Rayani Holdings, LLC ("Debtor in Possession") is a California Limited Liability Company first organized in June 2023. Debtor was organized to purchase and develop certain real property located in Lincoln, California (APN 021-274-054-000 and 021-274-057-000 hereinafter "Property") which is

approximately 8.85 acres. Debtor has obtained a tentative map splitting the two parcels into six, progress toward a final map is being made. The Property is well located and in the path of development. Debtor has employed an experienced commercial real estate broker who is actively marketing the Property. The Property is listed at $7,700,000 and the broker is in communication with a number of qualified buyers.

The Property was purchased for $5,500,000 in June 2023. There was a down payment of $1,000,000 and take back financing of $4,500,000 all due and payable in one year. The case was filed due to Debtor in Possession defaulting on monthly payments on its loan in Spring of 2024.

Disclosure Statement 3:19-4:8, Docket 43.

Creditor/Class	**Treatment**	
Class 1: JAS Land Fund 1, LLC	**Claim Amount**	**xxxxxxx**
	Impairment	Yes
	The secured claim of JAS Land Fund 1, LLC ("Creditor") is a first priority deed of trust secured by the Property APN 021-274-054-000 and 021-274-057-000 Lincoln, California. It shall be paid in full upon the sale of the real property	
Class 2: General Unsecured Claims	**Claim Amount**	**xxxxxxx**
	Impairment	Yes
	The allowed general unsecured claims will be paid upon the sale of the real property. No general unsecured claims have been identified.	
Class 3: Interest of the Debtor	**Claim Amount**	**xxxxxxx**
	Impairment	Yes
	The property of the estate shall revest to the Debtor upon the Plan Effective Date.	

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__Y__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__**N**__Listing of the scheduled claims

__Y__Liquidation analysis

__**N**__Identity of the accountant and process used

__Y__Future management of Debtor

__**N**__The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS

JAS Land Fund 1, LLC, Secured Creditor

Creditor is objecting to Debtor's proposed combined plan of reorganization for the following reasons:

1. The Disclosure Statement fails to provide adequate information. Specifically, the Plan omits any key details about the Plan of reorganization, fails to include deadlines, and is vague in its terms. The Plan merely states the Debtor in Possession intends to market and sell the Property, which is nothing more than wishful thinking. Opp'n 2:22-28, Docket 48.

2. The proposed Plan is not confirmable for the same reasons as above, so the court should not approve the Disclosure Statement. *Id.* at 3:18-4:6.

U.S. Trustee's Opposition

Tracy Hope Davis, the U.S. Trustee ("U.S. Trustee") filed her Opposition on January 8, 2025. Docket 50. U.S. Trustee objects on the following grounds:

1. Neither the Plan nor the Disclosure Statement appear to address the treatment of Placer County's secured claim of more than $168,000. Id at 2:4-5.

2. Neither the Plan nor the Disclosure Statement expressly address the expected timing of distributions to general unsecured creditors. The Plan states only that Class 2 general unsecured creditors "will be paid upon the sale of the real property." Further, although the Plan states that no general unsecured claims "have been identified," it appears that the IRS, the FTB, and Frayji Design Group each have modest general unsecured claims. *Id.* at 2:6-9.

3. Neither the Plan nor the Disclosure Statement address the payment of post-confirmation quarterly fees under 28 U.S.C. 1930(a)(6) or the filing of post-confirmation quarterly reports. *Id.* at 2:10-12.

4. Neither the Plan nor the Disclosure Statement address the Debtor's failure to file monthly operating reports for September 2024, October 2024, and November 2024, as required by Local Rule 2015-1. *Id.* at 2:12-14.

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court

> shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

The court finds that adequate information has not been provided in this case. The Disclosure Statement and Plan state that there are no general unsecured claims identified. However, The claims registry reveals three have been filed to date. POCs 1-1, 2-1, and 4-1. Moreover, the Disclosure Statement and Plan entirely neglect to provide for the secured claim of Placer County in the amount of $168,366.25. POC 3-1.

The Disclosure Statement states as the means for implementing the Plan:

> Debtor shall continue to actively market the real property of the estate. Management is also pursuing finalization of the existing tentative map that will allow the sale of separate parcels. Management reserves the right to obtain new financing or equity that will pay the claims in this case.

Disclosure Statement 9:16-21, Docket 43.

This statement fails to provide interested parties with any time line on progress or details surrounding the sale. It appears the Plan is going to be a liquidation plan, but that also there may be a refinancing to pay creditors in the future. The Disclosure Statement is vague and does not provide adequate information.

Moreover, Debtor in Possession has not timely filed monthly operating reports for September, October, and November of 2024.

At the hearing, the parties requested that the hearing be continued to allow for further negotiations over the Plan terms.

The hearing is continued to 11:30 a.m. on March 27, 2025.

March 27, 2025 Hearing

The court continued the hearing on approving the Disclosure Statement to permit further negotiations over the Plan terms. A review of the Docket on March 25, 2025 reveals Debtor in Possession has not filed any new pleadings related to the Disclosure Statement.

At the hearing, the Parties addressed "tweaks" being made to the Plan, and requested a short continuance.

The Motion to Approve Disclosure Statement is continued to 10:30 a.m. on April 10, 2025 (Specially set day and time).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Disclosure Statement filed by Rayani Holdings, LLC ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Disclosure Statement is **xxxxxxx**.

16. 24-24147-E-11 UST-1 | **RAYANI HOLDINGS, LLC** **Stephen Reynolds** | **CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **1-30-25 [54]**

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, Debtor's Attorney, and all creditors and parties in interest on January 30, 2025. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case is xxxxxxx.

April 10, 2025 Hearing

The court continued the hearing on this Motion as counsel for the Debtor in Possession addressed the shortcomings and the corrections being made. The Parties agreed to continue the hearing on this Motion

to be conducted in conjunction with a Motion to Approve Disclosure Statement and Chapter 11 Status Conference. A review of the Docket on April 7, 2025, reveals nothing new has been filed under this Docket Control Number.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

The United States Trustee, Tracy Davis ("U.S. Trustee"), seeks dismissal of the case on the basis that:

1. Rayani Holdings, LLC ("Debtor in Possession") has failed to file monthly operating reports for September 2024, October 2024, November 2024, and December 2024. Mot. 2:1-3, Docket 54.

2. Dismissal is a more appropriate remedy because it appears that there are only three unsecured claims, which total less than $10,000. *Id.* at 2:4-5.

U.S. Trustee submitted the Declaration of Laurie Brugger to authenticate the facts alleged in the Motion. Decl., Docket 56.

Debtor in Possession's Opposition

Debtor in Possession filed an Opposition on March 13, 2025. Docket 69. Debtor in Possession informs the court that the operating reports have since been filed, and that this case is moving forward. The case is not languishing, Debtor in Possession having engaged a broker to sell the single asset in the case.

U.S. Trustee's Reply

The U.S. Trustee filed a Reply to the Opposition on March 19, 2025. Docket 71. U.S. Trustee notes that the operating reports now having been filed are extremely late, the operating reports for September 2024, October 2024, and November 2024 each being filed on February 4, 2025. Thus, these reports were approximately 113 days late, 82 days late, and 50 days late, respectively.

Moreover, aside from the report for February 2025, the DIP has filed its monthly operating reports on the wrong form. Specifically, the DIP has utilized Official Form 425C, which is applicable in small business cases and Subchapter V cases. See Fed. R. Bankr. P. 2015(a)(6), (b). This case is not a small business case or a Subchapter V case. U.S. Trustee recommends dismissal.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.
>
> And under 11 U.S.C. § 1112(b)(1)(4)(F), the court may grant conversion or dismissal:
>
> (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

Collier's Treatise states on the subject:

> Congress added to the enumerated causes under section 1112(b)(4) the failure by the debtor to timely file or report information as required by other provisions of the Bankruptcy Code. By adding this provision, Congress has provided the statutory remedy for such failure where the remedy is not expressed within the Code provision setting forth the required reporting. For example, where a small business debtor fails to timely file the documents required to be appended to the petition pursuant to section 1116(1),104a such failure constitutes a failure to report. Similarly, section 1188(c) requires debtors proceeding under subchapter V to file a report of the debtor's efforts to obtain a consensual plan at least 14 days before the status conference scheduled by the court under section 1188(a). The failure to timely file this report constitutes cause. Nevertheless, by providing that the failure to report or file must be unexcused in order to constitute cause for dismissal or conversion, the statute provides to the court discretion in determining whether such cause has been established. "By inference the court, therefore, has the ability and some discretion to determine what is an 'excused' or 'unexcused' failure to 'timely file' the designated documents." Where the debtor subsequently cured the deficient filing and provided a good explanation for the delinquency in filing the documents required by section 1116(1), the court found that the failure to file or report was "excused."

7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][f].

DISCUSSION
Monthly Operating Reports

Debtor in Possession failed to timely file the required monthly operating reports for the months of September 2024, October 2024, November 2024, and December 2024. Debtor in Possession has attempted to remedy that error, filing the monthly operating reports to become current on the filings. However, as the U.S. Trustee points out, the operating reports are extremely tardy and not filed on the correct forms. Debtor in Possession informs the court that although the operating reports were late, stating that this case is not languishing and is constructively moving forward toward a confirmed plan.

Looking at the Docket, nothing further has been filed with respect to the proposed Disclosure Statement. On October 20, 2024, the court entered an order authorizing the employment of Kidder Mathews as the realtor for the sale of the 8.85 acre Lincoln, California property. Dckt. 29.

The court does not see a motion to approve the sale of property of the Bankruptcy Estate, notwithstanding the Debtor in Possession having employed a Realtor four months ago.

On Amended Schedule A/B, the Debtor lists the following assets:

A. Checking Account.....$ 27,277.28

B. 8,5 Acres in Lincoln, CA.....$7,500,000.00

Dckt. 1. Debtor has no other assets.

Dating back to the November 13, 2024 Status Conference, the court was advised by counsel for the Debtor in Possession that the Property is being actively marketed and the Plan will be for the prompt liquidation of the Property. See Civil Minutes; Dckt. 66.

At the hearing, counsel for the Debtor in Possession addressed these shortcomings and the corrections being made. The Parties agreed to continue the hearing on this Motion to be conducted in conjunction with a Motion to Approve Disclosure Statement and Chapter 11 Status Conference.

The hearing on the Motion to Dismiss Case is continued to 10:30 a.m. on April 10, 2025.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss Case is **xxxxxxx**.

FINAL RULINGS

17. 25-20320-E-7 TLA-1 | **CYNTHIA WOOTON** **Thomas Amberg** | **MOTION TO AVOID LIEN OF ONEMAIN FINANCIAL GROUP, LLC** **3-11-25 [13]**

Final Ruling: No appearance at the April 10, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 11, 2025. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of OneMain Financial Group, LLC ("Creditor") against property of the debtor, Cynthia Wooton ("Debtor") commonly known as 5714 Turnberry Drive, Marysville, CA 95901 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,723.11. Exhibit D, Dckt. 16. An abstract of judgment was recorded with Yuba County on January 22, 2025, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $505,000 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total $245,697.00 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $300,000 on Schedule C. Schedule C at 17, Docket 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cynthia Wooton ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of OneMain Financial Group, LLC, California Superior Court for Sutter County Case No. CVCM23-0002207, recorded on January 22, 2025, Document No. 2025-000782, with the Yuba County Recorder, against the real property commonly known as 5714 Turnberry Drive, Marysville, CA 95901, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. 24-25743-E-7 NF-1 | **DONALD JOHNSON** **Nikki Farris** | **CONTINUED MOTION TO AVOID LIEN OF CACV OF COLORADO, LLC** **1-6-25 [11]**

Final Ruling: No appearance at the April 10, 2025 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, creditors holding allowed secured claims, and Office of the United States Trustee on January 6, 2025. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

REVIEW OF THE MOTION

This Motion requests an order avoiding the judicial lien of CACV of Colorado, LLC ("Creditor") against property of the debtor, Donald L. Johnson ("Debtor") commonly known as 2719 Houghton Ave., Corning, Ca 96021 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,443.12. Exhibit B attached to the Motion, Dckt. 11. An abstract of judgment was presumably recorded; however, Debtor has not attached a copy of the abstract that has the relevant recorder information included. Moreover, Debtor has improperly attached the exhibits to the Motion in violation of LOCAL BANKR. R. 9004-2(c)(1).

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $227,200 as of the petition date. Schedule A, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $227,200 on Schedule C. Schedule C, Docket 1.

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

However, because the court does not have a copy of the Recorded Abstract of Judgment which shows the recording information, the court cannot issue an order avoiding such judicial lien.

The hearing is continued to 10:00 a.m. on February 27, 2024, to allow counsel for Debtor the opportunity to provide the required information.

February 27, 2025 Hearing

The court continued the hearing on this Motion as Debtor filed the Abstract of Judgment in support of the Motion without the recorder information visible on the Abstract. As of February 24, 2025, no there has been no supplement to the record.

It is concerning to the court that neither the Debtor nor Debtor's counsel has responded to the opportunity to provide the simple necessary document, a copy of the recorded abstract of judgment. By their inaction, it appears that the Debtors want to forfeit their right to avoid this judicial lien, and instead have it haunt them for decades, such as would occur if the court were to deny this Motion.

At the hearing, no appearance was made by Debtor or Debtor's counsel.

The court continues the hearing one last time to afford Debtor and Debtor's counsel to file a copy of the recorded abstract of judgment so that the court can have the necessary recording information to issue the order.

The hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on April 10, 2025.

If the recorded Abstract of Judgment is not filed by April 1, 2025, Counsel for the Debtor, Nikki Farris, Esq., shall appear at the April 10, 2025 continued hearing - Telephonic Appearance Permitted.

April 10, 2025 Hearing

The court continued the hearing on this Motion to afford Debtor an opportunity to file the recorder information on the abstract of judgment. If the recorder information was not filed before April 1, Debtor's attorney was ordered to appear. The recorder's information was filed on March 11, 2025. Docket 25.

The Motion is granted the judicial lien of Creditor is avoided.

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ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Donald L. Johnson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of CACV of Colorado, LLC, California Superior Court for Tehama County Case No. 12751, recorded on September 24, 2007, Document No. 20070175447, with the Tehama County Recorder, against the real property commonly known as 2719 Houghton Ave., Corning, Ca 96021, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19.	**24-24573-E-7** **SHR-2**	**PHILLIP KATTENHORN** **Richard Hall**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **2-4-25 [33]**

Final Ruling: No appearance at the April 10, 2025 hearing is required.

The court issued an Order on April 1, 2025, continuing the hearing on the Objection to Debtor's Claim of Exemption to 10:30 a.m. on May 20, 2025. Docket 62.

No appearance of the parties at the April 10, 2025 hearing is required.