

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**April 13, 2017, at 10:30 a.m.**

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1. <b><u>16-90500-E-11</u></b> <b>ELENA DELGADILLO</b> <b>HSM-5</b> <b>Len ReidReynoso</b>	<b>MOTION FOR COMPENSATION BY THE LAW OFFICE OF MARK E. MERIN FOR MARK E. MERIN, SPECIAL COUNSEL 3-16-17 [<a href="#">125</a>]</b>
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**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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The Chapter 11 Trustee makes a First and Final Request for the Allowance of Fees and Expenses in this case for Law Office of Mark E. Merin ("Applicant") special counsel for Irma Edmonds, the Chapter 11 Trustee ("Client").

Fees are requested for March 1, 2017. The order of the court approving employment of Applicant was entered on March 3, 2017. Dckt. 111. Applicant requests fees in the amount of \$2,000.00.

**April 13, 2017, at 10:30 a.m.**

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## STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing numerous files, deposition transcripts, video footage and the like, obtained from Debtor’s bankruptcy counsel, and provided Client with an initial analysis of the Civil Rights Action and an evaluation of the estate’s options going forward.

After having the benefit of Applicant’s services and completing her investigation, the Trustee has determined that she will not pursue the claims and that no further services of Applicant will be required. Therefore, this application is the first and final motion for fees by Applicant.

The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

## **FEES REQUESTED**

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

General Case Administration: Applicant spent 5.0 hours in this category. Applicant assisted Client with reviewing and analyzing case file in *Elena Delgadillo and Jesus Cortez vs. County of Alameda*. Applicant also e-mailed a report to Howard Nevins.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Mark Merin, Attorney	5.0	\$400.00	\$2,000.00

<b>Total Fees For Period of Application</b>	<b>\$2,000.00</b>
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## **FEES ALLOWED**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees	\$2,000.00
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pursuant to this Application as final fees 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 Law Office of Mark E. Merin (“Applicant”), Attorney for the 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 Law Office of Mark E. Merin is allowed the following fees and expenses as a professional of the Estate:

Law Office of Mark E. Merin, Professional employed by the Trustee

Fees in the amount of \$2,000.00,

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

**IT IS FURTHER ORDERED** that the 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 11 case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

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

Stephen Reynolds, the Attorney ("Applicant") for 1263 Investors, LLC, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 12, 2016, through February 23, 2017. The order of the court approving employment of Applicant was entered on January 26, 2016. Dckt. 21. Applicant requests fees in the amount of \$15,255.00 and costs in the amount of \$346.46.

#### **APPLICANT'S SUPPLEMENT**

Applicant filed a Supplement to the Motion on April 4, 2017. Dckt. 144. Applicant modifies his request and reduces the fees by \$495.00. Applicant does not clearly state the total fees and costs requested

in this Motion, but does state that it is consistent with the alternative tentative ruling which was issued in connection with Applicant's prior fee application. The prior motion was denied without prejudice for deficient service. Applicant did not attend the hearing he set on the prior motion. Citing the court to something posted as part of a "tentative ruling" is a citation to nothing, no ruling by the court.

## **STATUTORY BASIS FOR PROFESSIONAL FEES**

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(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

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103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

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- C. Are the services documented adequately?
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- E. Did the attorney exercise reasonable billing judgment?

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### **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including communicating with Client regarding the case and determined strategy, filing Motions for Employment, assisting Client with preparation and filing of Monthly Operating Reports, communicated with the United States Trustee, representing Client at 341 First Meeting of Creditors, preparing Client’s plan of reorganization and disclosure statement, and engaging in protracted negotiations that resulted in acceptance of plan. The court finds the services were beneficial to the Client and bankruptcy 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 Disposition: Applicant spent 16.30 hours in this category. Applicant assisted Client with preparing Motions to Sell and Motion to Value Secured Claim. Applicant reviewed documents and held discussions with involved parties regarding the short sale..

Case Administration: Applicant spent 12.50 hours in this category. Applicant prepared Motions for Employment and reviewed initial disclosure documents.

First Creditors Meeting: Applicant spent 12.40 hours in this category. Applicant attended First Creditors Meeting.

Motion for Compensation: Applicant spent 0.40 hours in this category. Applicant filed this Motion for Compensation.

Plan Statement: Applicant spent 9.90 hours in this category. Applicant assisted Client with preparing a plan of reorganization and disclosure statement, and engaging in protracted negotiations that resulted in acceptance of plan.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Steven Reynolds, Attorney <b>FN.1.</b>	51.50	\$300.00	\$15,255.00
<b>Total Fees For Period of Application</b>			\$15,255.00

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 FN. 1. The actual total fees are stated to be \$15,450.00 on Exhibit 2, and then reduced to \$15,255.00 in the Motion. This reduction of \$195.00 is not explained in the Motion, but it is explained by the court below.  
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The prior Motion caught the objection of the U.S. Trustee, taking exception to Applicant billing for significant travel between Davis, California, and Sacramento, California, which the court estimates to be less than 15 miles. The U.S. Trustee's prior objection is summarized as follows.

With respect to the travel time, the court's concern arises because Applicant's charges with respect to four specific courthouse events:

<b>Date and Event</b>	<b>Travel Time Billed as Attorneys' fees and Mileage</b>	<b>Time Billed as Attorneys' Fees for Event at Courthouse</b>
February 2, 2016 Initial Debtor Interview Sacramento Courthouse	Davis to Sacramento, CA  1.5 Hours Travel Time Billed  \$450.00 Attorneys Fees Charged for Travel	Initial Debtor Interview  1.5 Hours Billed  \$450 Attorneys' Fees Charged For Event

February 4, 2016 Status Conference Modesto Courthouse	Davis to Modesto California  3.0 Hours Travel Time Billed  \$900.00 Attorneys' Fees Charged for Travel	Status Conference  1.0 Hours Billed For Status Conference  1.0 Hours Billed For Preparation for Status Conference  \$600 Attorneys' Fees Billed
February 11, 2016 Creditors Meeting Sacramento Courthouse	Davis to Sacramento California  1.0 Hours Travel Time Billed  \$300.00 Attorneys' Fees Charged for Travel	Creditors Meeting  .75 Hours Billed for Creditors Meeting  \$225 Attorneys' Fees Charged for Creditors Meeting
February 16, 2017 Confirmation Hearing Sacramento Courthouse	Davis to Sacramento California  1.2 Hours Travel Time Billed  \$360.00 Attorneys' Fees Charged for Travel	Confirmation Hearing  .7 Hours Billed for Preparation  .5 Hours Billed for Attending Hearing  \$360.00 Attorneys' Fees Charged for Confirmation Hearing

In reviewing the above, the court notes that the time billed for the actual hearings is not unreasonable, and actually appears to be less than what one would expect. However, the "pure" travel time between Davis and Sacramento does not appear reasonable. For the Sacramento events, the court determines:

February 2, 2016 Initial Debtor Interview Sacramento Courthouse	Applicant is allowed <b>\$600.00 in attorneys' fees</b> , and the \$300.00 in excess of thereof is disallowed.
February 11, 2016 Creditors Meeting Sacramento Courthouse	Applicant is allowed <b>\$450.00 in attorneys' fees</b> for attending the Creditors Meeting, and the \$75.00 in excess thereof is disallowed.
February 16, 2017 Confirmation Hearing Sacramento Courthouse	Applicant is allowed <b>\$600.00 in attorneys' fees</b> for attending the Confirmation Hearing, and the \$120.00 in excess thereof is disallowed.

For appearing at the Status Conference in the Modesto Courthouse, the court allows Applicant the full 5 hours of billed time—\$1,500.00. In doing so, the court notes that Applicant has not attempted to bill some excessive charge in excess of a normal billing day. Applicant elected to take a case in the Modesto Division and is expected to properly fulfill his duties in that courthouse within normal billing practices. While not giving Applicant (and other attorneys throughout Northern California a “bonus billing” of awarding full legal fee travel time in excess of a normal billing day, the court does not “handicap” attorneys in the region who take on cases that are not “next door” (like Davis is to Sacramento).

In making this modest adjustment, the court infers that counsel’s “travel time” billing practice has effectively been a sloppy tracking of time for what is actually required for the meetings. It is hard to imagine that an attorney located at 555 Capital Mall or 2150 River Plaza Drive, only short distances from the Sacramento Courthouse, could leave their office, walk or drive their car to the courthouse, go through security, take the elevator to the seventh floor, meet with the client in advance, conduct the initial debtor interview or creditors meeting, confer with the client afterwards, egress the courthouse, and then walk or drive back to their nearby office. If Applicant had accurately tracked his time from stepping out of his car at the parking lot across from the courthouse until the time he put his posterior in the seat of his car after the meeting was concluded, it would be in excess of the times that he states were billed for the actual event.

The travel time from Davis to Modesto is reasonable (assuming that Applicant followed the posted speed limits). Presumably, on the drive down and returning, Applicant ruminated on the status conference and then what was addressed at the status conference. Applicant’s personal appearance at the first status conference was necessary and appropriate.

The court further notes that Applicant judiciously used telephonic appearances for other hearings, having only one trip to Modesto for which there are attorneys’ fees for the travel time.

Under these circumstances, the court allows Applicant the 3 hours of travel time at the full \$300.00 per hour rate. If counsel had been “greedy” and tried to bill more than a normal billing day, the court would have capped the fees and not given more for the additional travel time. Presumably, if there is extensive travel, such counsel is billing on other work and being productive, not believing that he or she could take a case multiple hours away and think that he or she could then bill 8, 9, 12, or 16 hours for attending a one hour status conference or hear.

The total disallowed time for counsel is \$195.00, which results in allowed attorneys’ fees of \$15,255.00.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$346.66 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Order to File Status Report and Attend Status Conference		\$11.77
Order to File Status Report and Attend Status Conference		\$14.98
Notice of Chapter 11 Bankruptcy Case		\$11.58
Chapter 11 Status Report		\$14.63
Notice of Motion to Value Collateral		\$22.50
Notice of Motion for Sale		\$22.50
Notice of Hearing on Disclosure Statement		\$16.50
Notice of Hearing to Approve Disclosure Statement		\$25.50
Order Approving Disclosure Statement; Ballot; First Amended Plan of Reorganization filed October 9, 2016; First Amended Disclosure Statement filed October 9, 2016		\$153.34
Continued Chapter 11 Status Report		\$16.94
Notice of Motion to Sell Free and Clear of Liens		\$21.78
Amended Notice of Sale		\$14.44
<b>Total Costs Requested in Application</b>		<b>\$346.46</b>

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

### **Fees**

Applicant seeks to be paid a single sum of \$15,601.46 for its fees and expenses incurred for Client, which represents a reduction for the travel fees that the U.S. Trustee opposed and that the court was not inclined to award in Applicant's original motion. However, it appears that the reduction is very minor when compared to the prior fee application. Prior Motion, Dckt. 130. In the Prior Motion Applicant requested \$15,450.00 in fees. *Id.*

First and Final Fees and Costs in the amount of \$15,601.46 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available funds of the estate in a manner consistent with the order of distribution in a Chapter 11 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$346.46 approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available funds of the estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$15,255.00
Costs and Expenses	\$346.46

pursuant to this Application as final fees 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 Stephen Reynolds (“Applicant”), Attorney for the 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 Stephen Reynolds is allowed the following fees and expenses as a professional of the Estate:

Stephen Reynolds, Professional employed by the Debtor in Possession

Fees in the amount of \$15,255.00  
Expenses in the amount of \$346.46,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Debtor in Possession.

**IT IS FURTHER ORDERED** that the Debtor in Possession 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 11 case.

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 15, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on May 18, 2017.**

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

The Motion filed by Rick Unruh and Theresa Unruh ("Debtor") requests the court to order the Trustee to abandon property commonly known as 11206 Scarlet Oak Drive, Oakdale, California ("Property"). The Property is encumbered by the liens of Ocwen Loan Servicing LLC and Chase Bank, securing claims of \$441,276.80 and \$101,001.83, respectively. The Declaration of Rick Unruh has been filed in support of the Motion, and it values the Property at \$615,000.00 and states that Debtor claims an exemption of \$100,000.00.

## **STIPULATION**

On March 31, 2017, Debtor and the Chapter 7 Trustee filed a Stipulation in which the parties agreed to continue the hearing on the matter to 10:30 a.m. on May 18, 2017, to allow the Trustee to evaluate Debtor's valuation of the Property. Dckt. 14.

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

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

The Motion to Compel Abandonment filed by Rick Unruh and Theresa Unruh ("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 hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on May 18, 2017.



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Richard Brehm ("Debtor") commonly known as 2828 Glasgow Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$18,334.33. An abstract of judgment was recorded with Stanislaus County on January 11, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$188,041.00 as of the date of the petition. The unavoidable consensual liens that total \$277,122.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) & (b)(5) in the amount of \$23,858.00 on Schedule C.

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 the 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 (not a minute 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 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 Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 642234, recorded on January 11, 2010, Document No. 2010-0002008-00, with the Stanislaus County Recorder, against the real property commonly known as 2828 Glasgow Drive, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
---

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Richard Brehm ("Debtor") commonly known as 2828 Glasgow Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,522.44. An abstract of judgment was recorded with Stanislaus County on December 8, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$188,041.00 as of the date of the petition. The unavoidable consensual liens that total \$277,122.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) & (b)(5) in the amount of \$23,858.00 on Schedule C.

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 the 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 (not a minute 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 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 Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 639544, recorded on December 8, 2009, Document No. 2009-0117105-00, with the Stanislaus County Recorder, against the real property commonly known as 2828 Glasgow Drive, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.**

Irma Edmonds, the Chapter 7 Trustee, seeks to employ Bob Brazeal of Remax Executive of Modesto, California, a Real Estate Broker ("Broker"), pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Trustee seeks the employment of Broker to assist the Trustee in the marketing and sale of 2401 Walnut Park Drive, Modesto, California ("Property").

Bob Brazeal testifies that he is representing the Trustee. Brazeal testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that he has no connection with the debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee,

or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Bob Brazeal as broker for the Chapter 7 estate on a six percent commission. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by the Chapter 7 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 Employ is granted, and the Chapter 7 Trustee is authorized to employ Bob Brazeal as a Real Estate Broker for the Chapter 7 Trustee on the terms and conditions as set forth in this order.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on March 9, 2017. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Turnover was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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.

<p><b>The Motion for Turnover is granted.</b></p>
---

Michael McGranahan, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6736 Lynch Avenue, Riverbank, California (“Property”).

## **DISCUSSION**

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Kenneth Miller and Wendy Miller (“Debtor”) to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from the Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of the estate from Debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While no opposition has been filed to this Motion by Debtor or any other party in interest, the court notes that Debtor has filed a Motion to Compel Abandonment (and a Reply related to that Motion) in which Debtor asserts that the Property is worth slightly more than its encumbrances, thus making the Property of inconsequential value to the Estate.

The Property is listed on Amended Schedule A as Debtor’s single family home. Dckt. 23. Therefore, when this Chapter 7 case was filed, the Property became property of the Estate, and its possession should be delivered to Movant.

## **STIPULATION AND CONTINUANCE OF HEARING**

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 76. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 79.

No further pleadings have been filed since the court’s order granting the stipulation and the March 23, 2017 hearing. The Motion is granted, and Debtor is ordered to deliver possession of the Property on or before **xxxx, 2017**.

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

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



The Motion for Turnover of Property filed by the 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 for Turnover of Property is granted.

**IT IS FURTHER ORDERED** that Debtor, and each of them, shall deliver on or before ~~xxxx~~, 2017, possession of the real property commonly known as 6736 Lynch Avenue, Riverbank, California (“Property”), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

8. <a href="#"><u>16-91014</u></a> -E-7 MDM-1	<b>KENNETH/WENDY MILLER</b> <b>Iain Macdonald</b>	<b>CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 2-3-17 [31]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on February 3, 2017. By the court’s calculation, 48 days’ notice was provided. 14 days’ notice is required.

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

<b>The Motion to Extend Deadline is granted.</b>
--

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion to Extend Time to File an Objection to Debtor's Discharge pursuant to Federal Rule of Bankruptcy Procedure 4004(b). The bar date for objecting to discharge was February 6, 2017, and the Trustee filed this Motion on February 3, 2017.

The Trustee's broker had inspected Kenneth Miller and Wendy Miller's ("Debtor") property and had reported a value that caused the Trustee to believe that there may be in excess of \$42,000.00 in non-exempt equity in the property to be recovered for the Estate. At the time of filing the Motion, Debtor had not decided whether to purchase the excess equity or surrender the property to the Trustee. Therefore, the Trustee moves for the court to extend the deadline for objecting to Debtor's discharge to and through May 8, 2017.

## **DEBTOR'S FIRST AND SECOND OPPOSITIONS**

Debtor filed an Opposition on February 6, 2017, arguing that Federal Rule of Bankruptcy Procedure 4004(b) specifies that a motion to extend deadline requires notice and a hearing. Dckt. 35. Debtor, therefore, objected to the Trustee's request that the Motion be granted ex parte. The Motion was not ruled on ex parte and has proceeded to the scheduled hearing on March 23, 2017. So, Debtor's first Opposition is resolved.

Debtor filed another Opposition on March 9, 2017. Dckt. 62. Debtor argues that the Trustee's request for an extension of time is based upon a flawed belief that Debtor's property is worth more than Debtor says it is worth. Accordingly, Debtor argues that there is no excess equity for Debtor to purchase and that there is no basis to surrender property to the Trustee, negating the two grounds the Trustee cited for the Motion. Debtor cites to *Willms v. Sanderson* for the proposition that a showing of cause to grant a motion to extend deadlines "must be compelling." 723 F.3d 1094, 1104 (9th Cir. 2013) (quotations omitted). Debtor argues that there is no evidence that additional time is needed.

## **DISCUSSION**

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, as long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1). Here, the deadline was February 6, 2017, and the Trustee filed this Motion before that date on February 3, 2017.

As the court has expressed in Debtor's Motion to Compel Abandonment (DCN: MF-2), if there is excess equity in the property that the Trustee is able to recover for the Estate, then Debtor's valuation of the property right now would be incorrect. Therefore, the Trustee's argument that he cannot decide whether to object to Debtor's discharge because Debtor has not decided whether to purchase the excess equity or surrender the property would be compelling. Even now, Debtor has not evidenced any intention to choose either option.

## **STIPULATION AND CONTINUANCE OF HEARING**

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 75. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 78.

No further pleadings have been filed since the court's order granting the stipulation and the March 23, 2017 hearing.

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

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

The Motion to Extend Deadline to Object to Debtor's Discharge, filed by the Chapter 7 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 deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to and through May 8, 2017.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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.

<p><b>The Motion to Compel Abandonment is denied without prejudice.</b></p>
---

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

The Motion filed by Kenneth Miller and Wendy Miller ("Debtor") requests the court to order the Trustee to abandon property commonly known as 6736 Lynch Avenue, Riverbank, California ("Property"). The Property is encumbered by the liens of JPMorgan Chase, securing claims of \$24,070.00, \$56,244.55, and \$243,193.63, for a total of \$323,508.18. The Declaration of Mark Verschelden has been filed in support of the Motion and values the Property at \$425,000.00 as of January 26, 2017, based in part on recent sales of other properties in the area. Dckt. 41; *see also* Appraisal Report, Exhibit A, Dckt. 42.

## TRUSTEE'S OPPOSITION

Michael McGranahan, the Chapter 7 Trustee, filed an Opposition on March 9, 2017. Dckt. 52. The Trustee states that he had a real estate broker who has been hired to assist the Estate inspect the interior and exterior of the Property. After speaking with the broker about that inspection, the Trustee believes that

he can sell the Property for an amount in the range of \$490,000.00 to \$510,000.00. The Trustee argues that Debtor cannot claim the Property is of inconsequential value to the Estate until the Trustee has solicited offers to purchase the Property.

Bob Brazeal, the Trustee's Broker, filed a declaration on March 9, 2017, in which he explains that at valuing the Property, he chose not to use the average price of recent sales in the Property's subdivision because the sale prices ranged from "very high" to "very low" and because houses in the subdivision are custom homes. Dckt. 54. Instead, Mr. Brazeal appraised the Property's value as if it were in a similar Modesto neighborhood.

## **DEBTOR'S REPLY**

Debtor filed a Reply on March 16, 2017. Dckt. 70. Debtor argues that the Trustee relies upon a faulty opinion of a real estate broker, while Debtor has proved that the Property is of inconsequential value to the Estate. Debtor argues that Mr. Brazeal's valuation is faulty because it does not rely upon recent sales within the Property's subdivision and because it compares the Property to properties in Modesto, which Debtor argues is not the same geographic area as Riverbank. Debtor also asserts that Mr. Brazeal's valuation is unreliable because he has not submitted any supporting evidence for the court's and parties' review. Debtor states that speculation as to a possible sale price for the Property is not sufficient to oppose the Motion.

## **DISCUSSION**

The dispute in this Motion relates to the Property's value. Debtor asserts that the Property is worth \$425,000.00. The Trustee argues that the Property is worth between \$490,000.00 and \$510,000.00. Debtor presented the declaration of an appraiser (and his appraisal report), and the Trustee presented the declaration of a real estate broker.

"Sales of fully encumbered assets are generally improper. In that instance, the trustee's proper function is to abandon the property, not administer it, because the sale would yield no benefit to unsecured creditors." *In re KVN Corp.*, 514 B.R. 1, 6 (B.A.P. 9th Cir. 2014). Abandonment is an exception, however, that "should not be ordered where the benefit of administering the asset exceeds the cost of doing so. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should very rarely be ordered." *Id.* (citing *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 246 (6th Cir. 1987); *Vu v. Kendall (In re Vu)*, 245 B.R. 644, 647–48 (B.A.P. 9th Cir. 2000)).

Here, the Trustee believes that there is consequential equity that can be gathered for the Estate by selling the Property, which is property of the Estate. Debtor believes the Property should be abandoned because its value is almost outweighed by liens, such that any recovery for the Estate would be inconsequential.

## **STIPULATION AND CONTINUANCE OF HEARING**

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 74. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 77.

No further pleadings have been filed since the court's order granting the stipulation and the March 23, 2017 hearing.

Abandonment being the exception to the rule, Debtor has presented no reason for the court not to allow the Trustee to attempt to sell property of the Estate.

If the Trustee is correct about the Property's value, then he will receive purchase offers that net consequential equity for the Estate. If Debtor is correct, though, then the Trustee will not receive purchase offers that would be worth pursuing because they would not generate consequential funds for the Estate. At that point, Debtor would be justified in seeking to have the court order the Trustee to abandon the Property back to Debtor. Until such time, there is no harm to Debtor in allowing the Trustee to attempt to yield as much funding as possible for the Estate, and there is the potential of significant benefit to creditors if the Trustee is able to secure purchase offers close to \$500,000.00.

The Motion is denied without prejudice.

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

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

The Motion to Compel Abandonment filed by Kenneth Miller and Wendy Miller ("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 to Compel Abandonment is denied without prejudice.

10. [12-93224-E-7](#) ABELARDO/ALEXIS CASAS  
SSA-4 Mark Nelson

MOTION FOR COMPENSATION FOR  
STEVEN S. ALTMAN, TRUSTEE'S  
ATTORNEY  
3-8-17 [\[67\]](#)

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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.**

Steven Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 15, 2013, through April 13, 2017. The order of the court approving employment of Applicant was entered on September 9, 2013. Dckt. 23. Applicant requests fees in the amount of \$10,892.00 and costs in the amount of \$135.08.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing Debtor’s schedules and statement of affairs for conflicts and legal issues, undertaking tasks assigned by the Trustee, reviewing claims, and litigating. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 8.5 hours in this category. Applicant assisted Client with coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, United States Trustee interim statements, and operating reports, contacts with the United States Trustee, and general creditor inquiries.

Fee Applications: Applicant spent 8.5 hours in this category. Applicant prepared employment and fee applications for himself and others, along with motions to establish interim procedures.

Claims Administration & Objection: Applicant spent 1.5 hours in this category. Applicant made specific claims inquiries, filed bar date motions, did analysis, and handled objection and allowances of claims.

Litigation: Applicant spent 19.3 hours in this category. Applicant coordinated with special counsel Lazar regarding the scope of his duties and the status of litigation, leading to an eventual partial settlement of Debtor’s claim for \$185,000.00.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Steven Altman, attorney	3.50	\$250.00	\$875.00
Steven Altman, attorney	33.00	\$300.00	\$9,900.00
Dawn Darwin, paralegal	1.30	\$90.00	\$117.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$10,892.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$135.08 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage and Copying		\$135.08
		\$0.00
		\$0.00
		\$0.00
<b>Total Costs Requested in Application</b>		\$135.08

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

#### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$10,892.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 \$135.08 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$10,892.00
Costs and Expenses	\$135.08

pursuant to this Application as final fees 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 Steven Altman (“Applicant”), Attorney for the 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 Steven Altman is allowed the following fees and expenses as a professional of the Estate:

Steven Altman, Professional employed by the Trustee

Fees in the amount of \$10,892.00  
Expenses in the amount of \$135.08,

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

**IT IS FURTHER ORDERED** that the 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.

11. [16-90830-E-7](#) **BRIAN BETTENCOURT** **MOTION TO COMPEL**  
**WRB-1** **Elizabeth Berke-Dreyfuss** **ABANDONMENT AND/OR MOTION TO**  
**AVOID LIEN OF ALABAMA METAL**  
**INDUSTRIES CORPORATION**  
**3-6-17 [49]**

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion 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 is denied without prejudice.**

#### **REVIEW OF MOTION TO COMPEL ABANDONMENT**

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

The Motion filed by Brian Bettencourt ("Debtor") requests the court to order the Trustee to abandon property commonly known as 609 Roxbury Lane, Modesto, California ("Property"). The Property is encumbered by the lien of Quicken Loans Inc., securing a claim of \$320,682.00. The Declaration of Brian Bettencourt has been filed in support of the Motion and values the Property at \$415,000.00.

## **REVIEW OF MOTION TO AVOID LIEN**

This Motion requests an order avoiding the judicial lien of Alabama Metal Industries Corporation (“Creditor”) against the Property.

A judgment was entered against Debtor in favor of Creditor in the amount of \$21,546.88. An abstract of judgment was recorded with Stanislaus County on October 5, 2012, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$415,000.00 as of the date of the petition. The unavoidable consensual liens that total \$320,682.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$50,000.00 on Amended Schedule C.

## **TRUSTEE’S NON-OPPOSITION**

Michael McGranahan, the Chapter 7 Trustee, filed a statement of non-opposition on March 29, 2017.

## **DENIAL OF MOTION**

The court notes that this Motion attempts to join multiple claims for relief in one motion. The first being a Motion to Compel Abandonment pursuant to 11 U.S.C. § 554(b). The second motion is to avoid a judicial lien as provided in 11 U.S.C. § 522(f).

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into the bankruptcy contested matter (bankruptcy case motion, objection, application process). Fed. R. Bankr. P. 9014(b). Movant has improperly joined the Motion to Compel Abandonment, based on 11 U.S.C. § 554(b) with the Motion to Avoid Judicial Lien.

Local Bankruptcy Rule 9014-1(d)(1) specifies that “every . . . motion . . . shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion.” Local Bankruptcy Rule 9014-1(l) provides that a motion may be denied as a sanction for failing to comply with the Local Rules. Here, Debtor moved for relief under two different statutes and has not requested the proposed relief as alternatives. The court denies the Motion without prejudice to allow Debtor to resubmit the proposed motions as separate filings.

The Motion filed by Brian Bettencourt (“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 to is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 6, 2017. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.**

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

The Motion filed by Carrie Bettencourt ("Debtor") requests the court to order the Trustee to abandon property commonly known as 609 Roxbury Lane, Modesto, California ("Property"). The Property is encumbered by the lien of Quicken Loans, Inc., securing a claim of \$320,682.00. The Declaration of Carrie Bettencourt has been filed in support of the Motion and values the Property at \$415,000.00. Debtor has claimed an exemption on Amended Schedule C in the amount of \$50,000.00. Dckt. 23.

While the Trustee filed a statement of non-opposition to Brian Bettencourt's request to compel abandonment of the Property, the Trustee has not filed a similar statement in this case. Nevertheless, the Trustee filed his report for this case on March 7, 2017. The Trustee reports that "there is no property available for distribution from the estate over and above that exempted by law."

After considering costs of sale and that Debtor has a one-half interest in joint tenancy of the Property, the court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

The court shall issue an Order (not a minute order) substantially in the following form holding that:

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

The Motion to Compel Abandonment filed by Carrie Bettencourt (“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 to Compel Abandonment is granted, and the all of the rights and interests of the bankruptcy estate in the Property identified as 609 Roxbury Lane, Modesto, California, and listed on Schedule A by Debtor is abandoned by Michael McGranahan, the Chapter 7 Trustee to Carrie Bettencourt by this order, with no further act of the Trustee required.



13. [14-91633](#)-E-7      **SOUZA PROPANE, INC.**      **CONTINUED MOTION FOR**  
**FWP-25**      **David Johnston**      **COMPENSATION BY THE LAW OFFICE**  
                **OF FELDERSTEIN FITZGERALD**  
                **WILLOUGHBY & PASCUZZI LLP FOR**  
                **DONALD W. FITZGERALD, TRUSTEES**  
                **ATTORNEY(S)**  
                **2-16-17 [[440](#)]**

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**The Motion for Allowance of Professional Fees is removed from the calendar, the court having granted the Motion prior to the hearing.**

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, the Attorney (“Applicant”) for David Flemmer, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case regarding Souza Propane, Inc., a California corporation fka Souza Butane-Propane, Inc., a California corporation (“Debtor”).

Fees are requested for the period February 5, 2016, through December 31, 2016. The order of the court approving employment of Applicant was entered on February 1, 2015. Dckt. 95. Applicant requests fees in the amount of \$18,408.00 and costs in the amount of \$914.08.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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 Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting administrative expense motions, performing asset analysis and recovery, helping with asset disposition, attending the 341 creditor’s meeting, reviewing claims administration and analysis, preparing compromise and settlement motions, attending hearings for conversion to a Chapter 7 case, filing multiple fee applications, handling general case administration, filing an employment application, and reviewing monthly and final reports . The court finds the services were beneficial to the Client and bankruptcy 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.

Administrative Expense Motions: Applicant spent 5.3 hours in this category. Applicant assisted Client with preparing a motion to set a second administrative claims bar date.

Asset Analysis and Recovery: Applicant spent 1.2 hours in this category. Applicant assisted Client with subsequent related correspondence regarding the value of claims versus the Souza individuals. Applicant also worked with Client and Debtor’s counsel regarding Debtor’s receipt of a refund check.

Asset Disposition: Applicant spent 1.0 hours in this category.

Attendance at 341 Creditor’s Meeting: Applicant spent 4.7 hours in this category. Applicant performed extensive review and analysis of questionable pre-petition and post-petition transfers and other records in preparation for the 341 meeting in the converted Chapter 7 case. Applicant also attended the 341 meeting.

Claims Administration and Analysis: Applicant spent 5.9 hours in this category. Applicant reviewed the proofs of claim filed, updated the claims analysis spreadsheets, attended a meeting with Client regarding Chapter 7 claims issues and available funds, performed legal research regarding a setoff of the Lawrence and Judith Souza claim, and drafting subsequent related correspondence to Client.

Compromise and Settlement: Applicant spent 12.9 hours in this category. Applicant negotiated and drafted the settlement agreement between Client and Assim Propane and Gas. Applicant also prepared for and attended a hearing concerning the issue. Furthermore, Applicant engaged in subsequent related correspondence with Client.

Conversion/Dismissal/Trustee: Applicant spent 1.2 hours in this category. Applicant prepared for and telephonically attended the hearing on conversion of the case to a Chapter 7 and engaged in subsequent related correspondence with Client.

Motion for Compensation: Applicant spent 11.7 hours in this category. Applicant prepared the third and final Chapter 11 fee application for Applicant. Applicant also reviewed the Court's tentative ruling on said matter.

General Case Administration: Applicant spent 3.5 hours in this category. Applicant drafted a spreadsheet of post-conversion dates and deadlines, participated in telephone conferences with Client, engaged in subsequent related correspondence with counsel for Lawrence Souza regarding the claim in the relevant case, and worked with Client on issues relating to possible refunds owed to the estate and Client's modified final report.

Other Professional Fee Applications: Applicant spent 4.7 hours in this category. Applicant drafted the second and final Chapter 11 fee application for Client and handled related matters.

Professional Employment Applications: Applicant spent 3.4 hours in this category. Applicant prepared an application to reaffirm Applicant's employment.

Reporting: Applicant spent 0.9 hours in this category. Applicant reviewed and filed Client's final monthly operating report and final Chapter 11 report.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Donald Fitzgerald, Attorney	17.0	\$495.00	\$8,415.00

Thomas Willoughby, Attorney	0.3	\$495.00	\$148.50
Jennifer Niemann, Attorney	11.1	\$395.00	\$4,384.50
Karen Widder, Legal Assistant	28.0	\$195.00	\$5,460.00
<b>Total Fees For Period of Application</b>			\$18,408.00

Applicant also requests the approval of \$677.92 for the preparation of this Motion and related matters done after December 31, 2016.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$914.08 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Delivery/Messenger		\$20.90
Document Retrieval		\$0.50
Photocopies	\$0.10	\$588.80
Postage		\$294.70
Hosting Conference Calls		\$9.18
<b>Total Costs Requested in Application</b>		\$914.08

### **CONTINUANCE OF HEARING**

Due to the recent passing of Trustee David Flemmer, and the appointment of Susan Smith in his place, the court continued the matter to 10:30 a.m. on April 13, 2017, to afford the new trustee time to review the Motion and file any supplements as she may see fit. Dckt. 454.

### **ORDER GRANTING MOTION**

On March 30, 2017, the court considered the new Trustee's non-opposition to the Motion and issued an order granting the Motion. Dckt. 460.

The court having granted the Motion by order prior to the hearing, this matter is removed from the calendar.

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

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

The Motion for Allowance of Fees and Expenses filed by Felderstein Fitzgerald Willoughby & Pascuzzi LLP (“Applicant”), Attorney for the 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 for Allowance of Professional Fees is removed from the calendar, the court having granted the Motion by order prior to the April 13, 2017 hearing.

14. <a href="#"><u>14-91633</u></a> -E-7 FWP-26	<b>SOUZA PROPANE, INC.</b> <b>David Johnston</b>	<b>CONTINUED MOTION FOR COMPENSATION    FOR DAVID D. FLEMMER, CHAPTER 7 TRUSTEE(S) 2-16-17 [<a href="#">447</a>]</b>
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**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion for Allowance of Professional Fees is removed from the calendar, the court having granted the Motion prior to the hearing.</b></p>
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David Flemmer, the Trustee (“Applicant”) for Debtor Souza Propane, Inc., a California corporation fka Souza Butane-Propane, Inc., a California corporation (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 5, 2016, through January 19, 2017.

## **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor’s estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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 Brunswick Drug Co. (In re Mednet)*, 251 B.R.



103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including negotiating a compromise agreement, preparing and conducting the 341 meeting, preparing Debtor’s final Chapter 11 monthly operating report, reviewing and approving final Chapter 11 fee applications, preparing monthly accounting and bank reconciliations, assembling Debtor’s corporate tax returns for the 2015 tax year, handling a refund check, drafting the final report and notice, producing the claims analysis spreadsheet for the final report, and preparing final distribution checks. The estate has \$181,454.68 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

### **FEES REQUESTED**

Applicant has not provided a complete task billing analysis with hourly allotments for each category, instead requesting fees in a total amount for providing services in the case.

Professional Services: Applicant spent 95.95 hours in this category. Applicant assisted Client with negotiating a compromise agreement, preparing and conducting the 341 meeting, preparing Debtor’s final Chapter 11 monthly operating report, reviewing and approving final Chapter 11 fee applications,

preparing monthly accounting and bank reconciliations, assembling Debtor's corporate tax returns for the 2015 tax year, handling a refund check, drafting the final report and notice, producing the claims analysis spreadsheet for the final report, and preparing final distribution checks.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant's raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

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FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

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**Trustee 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 \$950,000.00	\$12,199.83
<b>Calculated Total Compensation</b>	<b>\$17,949.83</b>
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$17,949.83
Less Previously Paid	\$0.00
<b><u>Total First and Final Fees Requested</u></b>	<b>\$17,949.83</b>

The fees are computed on the total disbursements by the Trustee totaling \$293,996.50.

## **CONTINUANCE OF HEARING**

Due to the recent passing of Trustee David Flemmer, and the appointment of Susan Smith in his place, the court continued this matter to 10:30 a.m. on April 13, 2017, to afford the new trustee time to review the Motion and file any supplements as she may see fit. Dckt. 456.

## **ORDER GRANTING MOTION**

On March 30, 2017, the court considered the new Trustee's non-opposition to the Motion and issued an order granting the Motion. Dckt. 461.

The court having granted the Motion by order prior to the hearing, this matter is removed from the calendar.

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 David Flemmer ("Applicant"), the Chapter 7 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 for Allowance of Professional Fees is removed from the calendar, the court having granted the Motion by order prior to the April 13, 2017 hearing.

15. [16-90649-E-7](#) **JEDFREY/NORMA HAHN** **MOTION TO AVOID LIEN OF**  
**BSH-3** **Brian Haddix** **CENTRAL STATE CREDIT UNION**  
**1-21-17** [\[57\]](#)

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on January 21, 2017. By the court’s calculation, 82 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 Central State Credit Union (“Creditor”) against property of Jedfrey Hahn and Norma Hahn (“Debtor”) commonly known as 6081 Can Lane, Valley Springs, California (“Property”).

#### **CREDITOR’S NON-OPPOSITION**

Creditor filed a Non-Opposition on March 28, 2017. Dckt. 71.

#### **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$18,214.91. An abstract of judgment was recorded with Calaveras County on May 31, 2016, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$120,000.00 as of the date of the petition. The unavoidable consensual liens that total \$50,000.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C.

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 the 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 (not a minute 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 the 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 Central State Credit Union, California Superior Court for Calaveras County Case No. 16CF11685, recorded on May 31, 2016, with the Calaveras County Recorder, against the real property commonly known as 6081 Can Lane, Valley Springs, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2017. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw as Attorney 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.

<p><b>The hearing on the Motion to Withdraw is continued to 10:30 a.m. on May 4, 2017.</b></p>
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Meegan, Hanschu & Kassenbrock ("Movant"), attorney of record for Lawrence Souza and Judith Souza ("Debtor in Possession"), filed a Motion to Withdraw as Attorney as Debtor in Possession's counsel in the bankruptcy case. Movant states the following:

1. Movant has not received prompt or complete responses to communications with and requests for information from Debtor in Possession.
2. Movant and Debtor in Possession have differed about the strategy and conduct of the case to the point that routine tasks become unreasonably difficult.

#### **DEBTOR IN POSSESSION'S OPPOSITION**

Debtor in Possession filed an Opposition on March 21, 2017. Dckt. 514. Debtor in Possession argues that withdrawal should not be allowed because Movant has been involved in numerous transactions throughout this case, and any change in counsel at this time would incur more expenses for the Estate.

Debtor in Possession believes that communication was hindered because their primary contact with Movant was through paralegal Mary Gillis, who was replaced by Anastasia Hoang. Ms. Hoang, Debtor in Possession argues, then moved to Fitzgerald, Felderstein, Willoughby and Pazcuzzi, LLP, which represents David Flemmer as trustee in the Souza Propane, Inc. case. Debtor in Possession argues that there was a delay in communication while they determined if there was a conflict of interest from the transfer.

Debtor in Possession admits that they have differed with Movant about case strategy and state that they “need to assume a more global perspective than that required of [Movant].” Debtor in Possession states that they “are often personally involved in working with prospective buyers of real estate, realtors and property management to expedite and achieve the best results for the benefit of the estate, requiring . . . extra time and energy.”

If the Motion is granted, Debtor in Possession states that they will need more time to retain new counsel, and they “suggest moving any decision regarding this situation to the already scheduled Status Hearing on August 24, 2017, at 2:00 P.M.”

#### **APPLICABLE LAW**

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

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

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

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

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California (“Rules of Professional Conduct”). E.D. Cal. L.R. 180(e).

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

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

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

Cal. R. Prof'l. Conduct 3-700(C)(1)(d).

## **DISCUSSION**

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor in Possession has not communicated and provided all information to Movant. Anthony Asebedo states in his declaration:

Over the course of the last several months, the Souzas have increasingly failed to respond to my requests for information and instructions necessary for administration of the chapter 11 case. My efforts to resolve this difficulty by way of repeated e-mail and telephone communications have not been productive. In addition, there have been disagreements between us in regard to the strategy and conduct of the chapter 11 case. These circumstances have caused the amount of attorney time to handle otherwise simple tasks to be unreasonably high and have rendered it unreasonably difficult for [Movant] to carry out its representation of the Souzas' bankruptcy estate.

. . . .

Despite its desire to withdraw as counsel, [Movant] continued to represent the Souzas after October 2015. I have been [Movant's] attorney responsible for providing the legal services to the estate, with the aim of moving the chapter 11 case to a satisfactory conclusion. But during the last several months, differences regarding the strategy for the chapter 11 case and the conduct of the case have continued to occur. Further, the Souzas have continued to fail to provide certain information I have requested a number of times, which failure has spanned a period of months.



Dckt. 508.

Movant does not discuss any prejudice his withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Movant pleads that it is unaware of any adversary proceeding “requiring . . . immediate attention.” Dckt. 506. A review of the docket shows that there are no adversary proceedings associated with this bankruptcy case. Movant asserts that it will represent Debtor in Possession through the hearing on this Motion and the U.S. Trustee’s motion to convert the case to Chapter 7.

Despite Debtor in Possession’s argument that Movant should not be allowed to withdraw because it has been involved in numerous transactions, Debtor in Possession has not responded to why it has not provided information Movant. Movant cannot effectively provide legal representation if it has not been provided with all necessary information.

Under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor in Possession’s conduct, such as the lack of timely and full response to correspondence from the Movant is hindering Movant’s ability to carry out its employment and duties effectively.

The court conducted an Initial Hearing on the Motion on April 12, 2017, in the Sacramento Division Courthouse. The court has continued the U.S. Trustee’s Motion to Convert or Dismiss this case to 10:30 a.m. on May 4, 2017.

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

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

The Motion to Withdraw as Attorney filed by Debtor in Possession’s 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 the hearing on the Motion to Withdraw as Attorney is continued to 10:30 a.m. on May 4, 2017.

17. [15-90358](#)-E-11      **LAWRENCE/JUDITH SOUZA**  
MHK-23                      **Anthony Asebedo**

**MOTION TO EMPLOY LANDLORD'S  
PROPERTY MANAGEMENT CO. AS  
REAL PROPERTY MANAGER AND/OR  
MOTION FOR COMPENSATION FOR  
LANDLORD'S PROPERTY  
MANAGEMENT CO., OTHER  
PROFESSIONAL(S)  
3-22-17 [516]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

Lawrence Souza and Judith Souza ("Debtor in Possession") seek to employ real property manager Landlord's Property Management Co. ("Manager"), pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment and compensation set at 9% of Manager to assist Debtor in Possession with managing various rental properties.

Debtor in Possession argues that Manager's appointment and retention is necessary to advertise rental property availability, collect rents, handle rental agreements, terminate tenancies as needed, and supervise property repairs. Debtor in Possession contends that Manager will replace the prior management company that the court had approved to be employed and compensated on October 20, 2016. *See* Dckt. 438.

Lawrence Rumbeck, owner of Manager, testifies that Manager manages residential and commercial properties in the Turlock, California, area. Lawrence Rumbeck testifies he and Manager do not represent or hold any interest adverse to Debtor in Possession or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mr. Rumbeck discloses that has been a social friend of Debtor in Possession for a number of years.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Landlord's Property Management Co. as property manager for the Chapter 11 estate on the terms and conditions set forth in the Property Management Agreement filed as Exhibit A, Dckt. 521, which proposes to compensate Manager with 9% of the amounts collected in rent (in addition to reimbursement for actual renting, leasing, property preparation, vacancy, and overhead fees). The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by 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 Employ is granted, and the Chapter 11 Debtor in Possession is authorized to employ Landlord's Property Management Co. as property manager for the Chapter 11 Debtor in Possession on the terms and conditions as set forth in the Property Management Agreement filed as Exhibit A, Dckt. 521.

**IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay a 9% fee on an interim basis, without further order, with the final authorization

for all fees paid pursuant to 11 U.S.C. § 330 obtained by Landlord's Property Management Co., with such fees subject to 11 U.S.C. § 328.

18. [15-90358](#)-E-11      **LAWRENCE/JUDITH SOUZA**      **MOTION TO SELL AND/OR MOTION**  
**MHK-24**      **Anthony Asebedo**      **FOR COMPENSATION FOR PMZ REAL**  
                **ESTATE, BROKER(S)**  
                **3-22-17 [[522\]](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2017. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Lawrence Souza and Judith Souza, as Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 121 West Syracuse Avenue, Turlock, California ("Property").

The proposed purchaser of the Property is Ashley Hart, and the terms of the sale are:

- A.      Sale price of \$156,000.00.

- B. Sale is all cash, with no third-party financing.
- C. Debtor in Possession will pay an escrow fee and title insurance.
- D. Property tax installments are current and will be pro-rated.
- E. Debtor in Possession will pay a 6% real estate broker commission, estimated at \$9,360.00.
- F. Debtor in Possession will remove propane storage tanks from the Property within sixty days of the close of escrow.
- G. Property sold as-is, with no representations or warranties from Debtor in Possession or the bankruptcy estate.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it promptly pays amounts owed to the Maiman Trust, California Franchise Tax Board, and Internal Revenue Service (partially).

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$9,360.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission, the employment of the broker having been previously authorized by this court. Order, Dckt. 486.

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

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

The Motion to Sell Property filed by Lawrence Souza and Judith Souza, as 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 Lawrence Souza and Judith Souza, as Debtor in Possession, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Ashley Hart or nominee ("Buyer"), the Property commonly known as 121 West Syracuse Avenue, Turlock, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$156,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 526, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Debtor in Possession is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Debtor in Possession's broker, PMZ Real Estate, of Turlock, California.

19. [15-90358](#)-E-11      **LAWRENCE/JUDITH SOUZA**      **MOTION TO CONVERT CASE FROM**  
UST-1      **David Meegan**      **CHAPTER 11 TO CHAPTER 7, MOTION**  
                **TO DISMISS CASE**  
                **2-22-17 [[500](#)]**

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the former Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2017. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

<p><b>The hearing on the Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is continued to 10:30 a.m. on May 4, 2017.</b></p>
--

This Motion to Dismiss the Chapter 11 bankruptcy case of Lawrence Souza and Judith Souza (“Debtor”) has been filed by Tracy Hope Davis (“Movant”), the United States Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor has not proposed a plan in the case’s two-year history, causing prejudicial delay against creditors.
- B. Debtor owes quarterly fees of \$975.

## **DEBTOR’S DECLARATION IN OPPOSITION**

Debtor filed a Declaration in Opposition on March 30, 2017. Dckt. 537. Debtor states (apparently without an actual Opposition providing argument from Debtor’s counsel) that the delinquent quarterly fees were paid on February 23, 2017.

Debtor acknowledges that a plan has not been proposed in this case and argues that the reason for the delay is that Debtor has been uncertain about tax consequences for various sales of real property that were owned by Souza Properties, Inc., Debtor’s wholly-owned S-Corporation. Debtor states that a Certified Public Accountant that the court approved to be employed told Debtor that 2014 tax returns were incorrect and would need to be amended before 2015 tax returns could be filed. Debtor claims to be seeking “an experienced CPA to prepare the amended [2014] return,” after which they would be closer to proposing terms for a plan.

## **APPLICABLE LAW**

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

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

## **DISCUSSION**

The U.S. Trustee argues that the case should be converted because of Debtor’s failure to propose a Plan of Reorganization two years into this case. The U.S. Trustee emphasizes that prior status reports

indicate that Debtor's counsel had drafted a disclosure statement and outline of a plan as early as June 2016, and possibly August 2015. The Trustee argues that not having provided those documents yet is prejudicial delay.

Debtor argues that other factors delayed proposing any plan terms, however. Debtor has argued that while they are attempting to sell various properties, their sales are subject to market conditions. Additionally, Debtor has been investigating how those property sales would affect taxes to them as individuals because the properties are owned by Debtor's S-Corporation. Finally, Debtor indicates that an accountant will need to help amend and file tax returns from prior returns, and after that point, Debtor intends to propose a plan.

The court has allowed Debtor to use cash collateral and sell property during this case. Debtor has indicated to the court a willingness to prosecute this case, and the court is not yet ready to convert the case when Debtor is closing in on proposing plan terms.

11 U.S.C. § 1112(b)(4)(K) provides cause for failure to pay fees from Chapter 123 of Title 28, which includes quarterly fees at 28 U.S.C. § 1930(a)(6). Debtor declares that the quarterly fees have been paid, that the delinquency was an oversight, and that Debtor is current now. This portion of the U.S. Trustee's grounds for conversion appears to be resolved.

The court is addressing in a separate motion whether counsel for the Debtor in Possession will be allowed to withdraw. In light of how much has been accomplished in the related corporate case and in this case to date, the court continues this hearing to first address the Debtor in Possession-Counsel breakdown.

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

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

The Motion to Dismiss the Chapter 11 case filed by Tracy Hope Davis, the United States 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 hearing on the Motion to Dismiss is continued to 10:30 a.m. on May 4, 2017.



20. [10-94960](#)-E-7      GUADALUPE CAMPOS  
[17-9003](#)              SSA-1  
FARRAR V. JIMENEZ

**MOTION TO DISMISS ADVERSARY  
PROCEEDING AND/OR MOTION TO  
REQUIRE A MORE DEFINITE  
STATEMENT**  
3-9-17 [[9](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
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Defendant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

21. [17-90063](#)-E-7      JAMES FRITZ  
SSA-1                  Steven Altman

**CONTINUED MOTION TO COMPEL  
ABANDONMENT**  
2-8-17 [[11](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.  
-----

Debtor having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Compel Abandonment was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 10, 2017. By the court's calculation, 34 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 Valley First Credit Union ("Creditor") against property of Manuel Ramos ("Debtor") commonly known as 1113 Lone Way, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,958.55. An abstract of judgment was recorded with Stanislaus County on June 26, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$59,500.00 as of the date of the petition. The unavoidable consensual liens that total \$76,061.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

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 the 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 (not a minute 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 the 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 Valley First Credit Union, California Superior Court for Stanislaus County Case No. 674073, recorded on June 26, 2012, Document No. 2012-0056360-00, with the Stanislaus County Recorder, against the real property commonly known as 1113 Lone Way, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

23.	<a href="#"><u>16-91067</u></a> -E-7 MDM-1	<b>MARIO FIMBREZ</b> <b>Martha Lynn Passalacqua</b>	<b>MOTION TO SELL</b> <b>2-28-17 [15]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2017. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Sell Property is granted.</b>
--

The Bankruptcy Code permits Michael McGranahan, the Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as a 2008 Hyundai Elantra, VIN ending in 4928 (“Vehicle”).

The proposed purchaser of the Property is Mario Fimbrez, the debtor, (“Buyer”) and the terms of the sale are:

- A. Buyer has agreed to purchase the excess, non-exempt equity in the Vehicle for the sum of \$3,000 and has paid the Trustee that amount.
- B. The Trustee will execute any and all documents necessary for the completion of this sale.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Kelly Blue Book value of the Vehicle is in the range of \$2,700.00 to \$3,500.00, and selling the non-exempt equity in the Vehicle to Debtor for \$3,000.00 is appropriate.

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

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

The Motion to Sell Vehicle filed by Michael McGranahan, the 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 Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mario Fimbrez or nominee (“Buyer”), the Vehicle identified as a 2008 Hyundai Elantra, VIN ending in 4928 (“Vehicle”), on the following terms:

- A. The Vehicle shall be sold to Buyer for \$3,000.00, on the terms and conditions set forth in the Motion to Sell, Dckt. 15, and as further provided in this Order.
- B. The Trustee, is authorized to execute any and all documents reasonably necessary to effectuate the sale.

**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.

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2017. By the court's calculation, 15 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----  
-----.

<p><b>The Motion for Allowance of Professional Fees is denied without prejudice.</b></p>
--

The Chapter 7 Trustee makes a First and Final Request for the Allowance of Fees and Expenses for Ryan, Christie, Quinn & Horn, Certified Public Accountants, the Accountant ("Applicant") for Stephen Ferlmann, the Chapter 7 Trustee ("Client").

Fees are requested for the period October 10, 2016, through February 6, 2017. The order of the court approving employment of Applicant was entered on November 20, 2016. Dckt. 175. Applicant requests fees in the amount of \$7,090.00.

## **INSUFFICIENT NOTICE PROVIDED**

The Motion was not set on the proper amount of notice. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires that the parties in interest be provided notice at least twenty-one days in advance. Fifteen days' notice was provided. Therefore, the Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"), Accounts for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

## **THE COURT HAS PROVIDED THE FOLLOWING ALTERNATIVE RULING IF THE APPLICANT PROVIDES THE CORRECT NOTICE TO THE NECESSARY PARTIES AS REQUIRED**

### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, preparation of tax return and related matters, writing subsequent related correspondence. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.



## FEES REQUESTED

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

General Case Administration: Applicant spent 2.8 hours in this category. Applicant assisted Client with conducted communications with Client on matters regarding the case. Applicant also prepared Motions for Employment and Motions for Compensations.

Tax Return Preparation and Related Matters: Applicant spent 22.4 hours in this category. Applicant prepared federal and state tax returns for the years 2012, 2013, 2014, 2015, 2016. Applicant analyzed tax information of the debtors and reported them to Client.

Correspondence: Applicant spent 7.3 hours in this category. Applicant conducted subsequent related correspondence with Client regarding the Ponzi Scheme, terms of global settlement, estate returns, and tax matters.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Paul Quinn, CPA	18.7	\$250.00	\$4,675.00
Deborah Monis, CPA	13.8	\$175.00	\$2,415.00
<b>Total Fees For Period of Application</b>			<b>\$7,090.00</b>

## FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$7,090.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$7,090.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

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

Ryan, Christie, Quinn & Horn, Certified Public Accountants, Professional employed by the Trustee

Fees in the amount of \$7,090.00,

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

**IT IS FURTHER ORDERED** that the 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.

25. [09-94269-E-7](#)  
SCF-3

SUSHIL/SUSEA PRASAD  
James Pitner

MOTION FOR COMPENSATION FOR  
STEPHEN C. FERLMANN, CHAPTER 7  
TRUSTEE  
3-29-17 [\[181\]](#)

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

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

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

Insufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2017. By the court's calculation, 15 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----  
-----.

<p><b>The Motion for Allowance of Professional Fees is denied without prejudice.</b></p>
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Stephen Ferlmann, the Trustee ("Applicant") for Debtor Sushil Prasad and Susea Prasad ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period January 2, 2013, through March 29, 2017.

#### **INSUFFICIENT NOTICE PROVIDED**

The Motion was not set on the proper amount of notice. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires that the parties in interest be provided notice at least twenty-one days in advance. Fifteen days' notice was provided.

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 Stephen Ferlmann (“Applicant”), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT REQUESTS THAT THE COURT SHORTEN THE NOTICE PERIOD**

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor’s estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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 Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including conducting the meeting of creditors, analyzing and recovering assets, administering the case, analyzing tax issues, reviewing the filed claims, and consulting with counsel regarding litigation. The estate has \$52,625.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

## FEES AND COSTS REQUESTED

### Fees

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

General Case Administration: Applicant recorded payments received, paid administrative expenses, reconciled estate accounts, prepared reports for the U.S. Trustee, prepared the Final Report, and prepared fee applications for himself and for the Estate's accountant.

Meeting of Creditors: Applicant reviewed the Chapter 13 proceedings along with Debtor's statements and schedules, tax return, and bank statements in addition to conducting the meeting of creditors.

Asset Analysis & Recovery: Applicant received turnover of funds from the Chapter 13 Trustee, Russell Greer, of \$5,493.47. The Estate recovered \$110,000.00 from a settlement in an adversary proceeding against Debtor, Meyer Wilson, and Transamerica, in addition to \$4,000.00 received as a discovery sanction. The Trustee recovered \$26,000.00 from Debtor. The Trustee settled a dispute with the Singh estate and recovered \$10,259.50.

Tax Issues: Applicant submitted all required tax returns to the IRS and FTB for 2012 through 2016.

Claims Administration: Applicant reviewed the claims filed with the Estate and reviewed the administrative claims.

Litigation Consulting: Applicant coordinated with counsel for the Estate to file an adversary proceeding against Debtor, Meyer Wilson, and Transamerica, involving numerous e-mails, research, providing counsel with discovery request documents, preparing for a settlement conference, and participating in settlement negotiations.

### **Trustee 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 \$950,000.00	\$5,287.62
<b>Calculated Total Compensation</b>	<b>\$11,037.62</b>
<b><u>Total First Interim Fees Requested</u></b>	<b>\$11,037.62</b>

## **Costs**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$214.52 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Copies	\$0.25	\$57.75
Meals	\$12.04	\$36.12
Mileage	\$0.54	\$76.68
Parking	\$1.60 per hour	\$14.50
Postage	\$0.49, \$1.15, and \$1.51	\$29.47
<b>Total Costs Requested in Application</b>		<b>\$214.52</b>

## **FEES AND COSTS ALLOWED**

### **Fees**

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$11,037.65 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs**

First and Final Costs in the amount of \$214.52 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 \$52,625.00 of unencumbered monies to be administered. The Chapter 7 Trustee conducted the meeting of creditors, analyzed and recovered assets, administered the case, analyzed tax issues, reviewed the filed claims, and consulted with counsel regarding litigation. Applicant's efforts have resulted in a realized gross of \$52,625.00 recovered for the estate. Dckt. 183.

This case required significant work by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$11,037.65
Costs and Expenses	\$214.52

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 Stephen Ferlmann ("Applicant"), the Chapter 7 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 Stephen Ferlmann is allowed the following fees and expenses as a professional of the Estate:

Stephen Ferlmann, the Chapter 7 Trustee

Fees in the amount of \$11,037.65  
Expenses in the amount of \$214.52,

**IT IS FURTHER ORDERED** that the 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.



26. [07-90770](#)-E-7      BELLA VISTA BY PARAMONT,      MOTION FOR COMPENSATION BY  
CWS-6      LLC      THE LAW OFFICE OF NEUMILLER &  
Michael Warda      BEARDSLEE FOR CLIFFORD W.  
STEVENSON, TRUSTEE'S ATTORNEY(S)  
2-23-17 [69]

**Final Ruling:** No appearance at the April 13, 2017 hearing is required.

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**The Motion for Allowance of Professional Fees is dismissed without prejudice.**

Applicant having filed an Ex Parte Motion to Dismiss the pending Motion on April 6, 2017, Dckt. 74; no prejudice to the responding party appearing by the dismissal of the Motion; and Applicant having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; the Ex Parte Motion is granted, Applicant's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion for Allowance of Professional Fees filed by Applicant having been presented to the court, Applicant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 74, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Allowance of Professional Fees is dismissed without prejudice.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2017. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----.

<b>The Motion to Employ is granted.</b>
---

Michael McGranahan, the Chapter 7 Trustee, seeks to employ Huisman Auctions, Inc. ("Auctioneer"), pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. The Trustee seeks the employment of Auctioneer to assist the Trustee in conducting a public auction of personal property (2010 Jeep Compass) of the bankruptcy estate.

David Huisman, of Huisman Auctions, Inc., testifies that he is representing the firm. Huisman testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Huisman Auctions, Inc., as Auctioneer for the Chapter 7 estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 23. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by the Chapter 7 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 Employ is granted, and the Chapter 7 Trustee is authorized to employ Huisman Auctions, Inc., as auctioneer for the Chapter 7 Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 23.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by auctioneer in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2017. By the court’s calculation, 23 days’ notice was provided. 21 days’ notice is required. Fed. R. Bankr. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----.

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Michael McGranahan, the Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the personal property commonly known as a 2010 Jeep Compass, VIN ending in 4824 (“Vehicle”).

The proposed purchaser of the Vehicle will be determined at auction, and the terms of the auction are:

- A.         Estimated sale of Vehicle for \$10,000.00,
- B.         Auctioneer’s commission of 15% of the sale price,
- C.         Buyer shall pay a premium of 10% of the sale price to the Auctioneer,
- D.         Within thirty days of the auction sale, the Auctioneer will turn over the net proceeds to the Trustee, and

- E. Auctioneer will pay towing and other ordinary costs.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it may generate as much as \$8,500.00 for distribution to claims in this case, and because the Vehicle is not necessary for an effective reorganization. As part of the sale, Movant is authorized to pay a fifteen percent commission to the auctioneer.

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

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

The Motion to Sell Property filed by Michael McGranahan, the 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 Michael McGranahan, the Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) to a or nominee, the Vehicle commonly known as a 2010 Jeep Compass, VIN ending in 4824 (“Vehicle”), on the following terms:

- A. The Vehicle shall be sold to a buyer for approximately \$10,000.00, on the terms and conditions set forth in the Auction Agreement, Exhibit A, Dckt. 29, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Trustee is authorized to pay an auctioneer’s commission in an amount equal to fifteen percent of the actual purchase price upon consummation of the sale. The fifteen percent commission shall be paid to the Trustee’s auctioneer, Huisman Auctions, Inc.

E. The buyer of the Vehicle shall pay a premium of ten percent of the sale price to the auctioneer.

29. [09-91476](#)-E-7 KARLA CHANCELLOR MOTION TO AVOID LIEN OF  
JCK-8 Gregory Smith FINANCIAL PACIFIC LEASING, LLC  
3-16-17 [\[69\]](#)

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 16, 2017. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Financial Pacific Leasing, LLC (“Creditor”) against properties of Karla Chancellor (“Debtor”) commonly known as 730 East Main Street, Turlock, California, and 1000 East Main Street, Turlock, California (“Properties”). FN.1.

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FN.1. Movant filed the Motion and Exhibit 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, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules,

as required by Local Bankruptcy Rule 9004(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.

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A judgment was entered against Debtor in favor of Creditor in the amount of \$26,069.52. An abstract of judgment was recorded with Stanislaus County on December 5, 2008, that encumbers the Properties.

Pursuant to the Debtor's Schedule A, the subject real properties have an approximate value of \$245,000.00 (730 East Main Street) and \$184,500.00 (1000 East Main Street), as of the date of the petition. The unavoidable consensual liens that total \$239,321.49 against 730 East Main Street and \$187,370.16 against 1000 East Main Street as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed exemptions on Schedule C pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$5,678.51 for 730 East Main Street and § 703.140(b)(5) in the amount of \$12,000.00 for 1000 East Main Street.

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 the Debtor's exemptions of the real properties, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute 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 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 Financial Pacific Leasing, LLC, California Superior Court for Stanislaus County Case No. 627112, recorded on December 5, 2008, Document No. 2008-0128250-00, with the Stanislaus County Recorder, against the real properties commonly known as **730 East Main Street, Turlock, California**, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

30.	<a href="#"><u>12-92176</u></a> -E-7 TPH-2	LARRY/JANET MACEDO Thomas Hogan	MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 3-23-17 <a href="#"><u>26</u></a>
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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).

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, \_\_\_\_\_.

**April 13, 2017, at 10:30 a.m.**  
**- Page 88 of 104 -**



Debtor attached an abstract of judgment as Exhibit 4, and the court's review of it shows that there is no proof that the judgment has been recorded. Without recording information, the court cannot issue an order identifying the lien to be avoided. The Motion is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES THE RECORDING INFORMATION FOR THE ABSTRACT OF JUDGMENT**

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,763.13. An abstract of judgment was recorded with Stanislaus County on xxxx, 201x, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$170,000.00 as of the date of the petition. The unavoidable consensual liens that total \$172,066.57 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

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 the 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 (not a minute 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 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 Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 649233, recorded on **xxxx, 201x**, Document No. **xxxx** with the **Stanislaus** County Recorder, against the real property commonly known as 2833 Whitewood Court, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

31. <a href="#"><u>16-90277</u></a> -E-7 <b>ADJ-5</b>	<b>BENSON CONSTRUCTION, INC. Stephen Murphy</b>	<b>MOTION FOR COMPENSATION FOR GRIMBLEBY COLEMAN, ACCOUNTANT 3-30-17 <a href="#"><u>[52]</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 30, 2017. By the court’s calculation, 14 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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, -----  
-----.

<p><b>The Motion for Allowance of Professional Fees is denied without prejudice.</b></p>
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The Chapter 7 Trustee makes a First and Final Request for the Allowance of Fees and Expenses in this case for Grimbleby Coleman, Certified Public Accountants, Inc., the Accountant (“Applicant”) for Michael McGranahan, the Chapter 7 Trustee (“Client”).

Fees are requested for the period June 10, 2016, through February 1, 2017. The order of the court approving employment of Applicant was entered on August 15, 2016. Dckt. 35. Applicant requests fees in the amount of \$8,827.50.

### **INSUFFICIENT NOTICE PROVIDED**

Applicant provided fourteen days' notice, but Federal Rule of Bankruptcy Procedure 2002(a)(6) requires twenty-one days' notice when fee requests exceed \$1,000.00. Therefore, the Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed for Grimbly Coleman, Certified Public Accountants, Inc. ("Applicant"), Accountant for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

### **THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE**

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including accounting services such as preparing federal and state tax returns and preparing time records for this Application. The estate has \$21,700.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

## FEES REQUESTED

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

2015 Tax Preparation: Applicant spent 29.30 hours in this category. Applicant assisted Client with reconciling Debtor's records and preparing federal and state income tax returns.

2016 Tax Preparation: Applicant spent 9.90 hours in this category. Applicant assisted Client with reconciling Debtor's records and preparing federal and state income tax returns.

IRS Tax Notice: Applicant spent 0.30 hours in this category. Applicant analyzed an IRS tax notice.

Employment/Fee Applications: Applicant spent 4.10 hours in this category. Applicant prepared an employment applications and time records for this Application.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Jeff Coleman, CPA	3.80 hours	\$350.00	\$1,330.00
	0.40 hours	\$380.00	\$152.00
Debbie Sanders, CPA	29.20 hours	\$180.00	\$5,256.00
	8.80 hours	\$200.00	\$1,760.00
Kenny Ware, CPA	0.90 hours	\$225.00	\$202.50
Donae Carvalho, CPA	0.50 hours	\$250.00	\$125.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			<b>\$8,825.50</b>

The court notes that Applicant's request is \$2.00 more than billing data that has been pled in the Application.

## FEES ALLOWED

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 \$8,825.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$8,825.50
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pursuant to this Application as final fees 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 Grimbleby Coleman, Certified Public Accountants, Inc. ("Applicant"), Accountant for the 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 Grimbleby Coleman, Certified Public Accountants, Inc., is allowed the following fees and expenses as a professional of the Estate:

Grimbleby Coleman, Certified Public Accountants, Inc., Professional employed by the Trustee

Fees in the amount of \$8,825.50,

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

**IT IS FURTHER ORDERED** that the fees of \$2.00 are not allowed by the court.

**IT IS FURTHER ORDERED** that the 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.

32. [16-90277](#)-E-7      **BENSON CONSTRUCTION,**      **MOTION FOR COMPENSATION FOR**  
**ADJ-6**      **INC.**      **ANTHONY D. JOHNSTON, TRUSTEE’S**  
      **Stephen Murphy**      **ATTORNEY**  
           **3-30-17 [59]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 30, 2017. By the court’s calculation, 14 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

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

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<p><b>The Motion for Allowance of Professional Fees is denied without prejudice.</b></p>
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Anthony Johnston, of Fores ■ Macko, the Attorney (“Applicant”) for Michael McGranahan, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 26, 2017, through March 30, 2017. The order of the court approving employment of Applicant was entered on May 4, 2016. Dckt. 10. Applicant requests fees in the amount of \$5,417.50 and costs in the amount of \$71.38.



## **INSUFFICIENT NOTICE PROVIDED**

Applicant provided fourteen days' notice, but Federal Rule of Bankruptcy Procedure 2002(a)(6) requires twenty-one days' notice when fee requests exceed \$1,000.00. Therefore, the Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by Anthony Johnston ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

## **THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE**

### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including arranging for sale of property at auction through an auctioneer, assisting with preparation of Debtor’s tax returns and accounting books, moving for administrative expenses, reviewing and analyzing claims, and preparing applications for compensation. The estate has \$21,700.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

## FEES AND COSTS & EXPENSES REQUESTED

### Fees

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

General Case Administration: Applicant spent 4.10 hours in this category. Applicant assisted Client with preparing Debtor's tax returns, reconciling Debtor's accounting records, preparing a motion for approval of payment of Franchise Tax Board taxes as an administrative expense, reviewing and analyzing claims, and communicating with a class action attorney whose clients hold a judgment against Debtor and submitted Claims 1 & 4.

Asset Disposition: Applicant spent 10.00 hours in this category. Applicant assisted the Trustee with recovering a trailer that was towed with a \$500.00 reduction in towing fees, preparing a motion to employ an auctioneer to sell property, preparing a motion for authority to sell property at auction, and reviewing records to determine if Debtor held assets in the State of Washington.

Fee and Employment Applications: Applicant spent 5.60 hours in this category. Applicant prepared documents for his employment, for compensation of the Trustee's accountants, and for compensation for this Motion.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Anthony Johnston, attorney	19.70	\$275.00	\$5,417.50
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
<b>Total Fees For Period of Application</b>			\$5,417.50

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$71.38 pursuant to this application. The court notes that while Applicant requests \$71.38 in costs, Exhibit C totals \$71.39 in costs. Dckt. 63.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10	\$38.90
Postage		\$32.49
		\$0.00
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$71.39</b>

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

#### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,417.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 \$71.39 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$5,417.50
Costs and Expenses	\$71.39

pursuant to this Application as final fees 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 Anthony Johnston, of Fores ■ Macko, ("Applicant"), Attorney for the 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 Anthony Johnston, of Fores ■ Macko, is allowed the following fees and expenses as a professional of the Estate:

Anthony Johnston, Professional employed by the Trustee

Fees in the amount of \$5,417.50  
Expenses in the amount of \$71.39,

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

**IT IS FURTHER ORDERED** that the 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2017. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Michael McGranahan, the Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the personal property commonly known as a 2009 Cadillac, VIN ending in 2198 (“Vehicle”).

The proposed purchaser of the Vehicle is Edward Larsen and Susan Larsen (“Debtor”), who propose to purchase the non-exempt equity in the Vehicle for \$4,000.00. The Trustee believes that the Vehicle has a value between \$6,200.00 and \$7,700.00, and Debtor has claimed an exemption in the Vehicle of \$ 3,050.00.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the purchase price plus the Debtor’s exemption puts the Vehicle’s value within the range that the Trustee had determined. Additionally, Debtor received a discharge in this case on February 27, 2017. Dckt. 21.

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

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

The Motion to Sell Property filed by Michael McGranahan, the 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 Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Edward Larsen and Susan Larsen or nominee (“Buyer”), the Property commonly known as a 2009 Cadillac, VIN ending in 2198, (“Vehicle”), on the following terms:

- A. The non-exempt equity in the Vehicle shall be sold to Buyer for \$4,000.00.
- B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.