UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

April 20, 2023 at 10:30 a.m.

1.	**20-90115-E-7** **MDM-3** **1 thru 3**	**ALI MUTHANA** **Gurjeet Rai**	**MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE(S)** **3-28-23 [154]**

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

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 30, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ---------------------------------.

The Motion for Allowance of Professional Fees is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Ali Saeed Muthana ("Client"), makes a Request for the Allowance of First and Final Fees and Expenses in this case. Fees in the amount of $27,190.50 are requested for the period February 11, 2020, through April 20, 2023.

STATUTORY BASIS FOR FEES

> 11 U.S.C. § 330(a)
>
> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
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> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

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

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

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

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

Benefit to the Estate

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, asset analysis, recovery, and disposition, filing and litigating an adversary proceeding against Debtor and Creditor GNN, settling with Debtor and Creditor GNN regarding proceeds from the sale of real property.. The Estate has approximately $298,318.29 of unencumbered monies to be administered as of the filing of the application. Declaration, Dckt. 157.

This case involved not only assets of substantial value, but assets that the Debtor purported to transfer during the Bankruptcy Case that the Trustee had to recover. There was also a post-petition deed of trust placed on the property by the transferee and a purported life estate leaseback to the Debtor that the Trustee had to address. The Trustee was required to prosecute an adversary proceeding, 21-9008, as part of unwinding the post-petition purported transfer by the Debtor. The Trustee obtained judgments against the Debtor and the transferee, and then settled the case with the post-petition lender, whose loan paid on the pre-petition debt that was secured by a deed of trust on the property.

This clearly is not the normal, routine case. Allowing the compensation based on the a commission like basis, 11 U.S.C. § 330(7), is appropriate and provide for reasonable compensation for a bankruptcy case of this complexity and assets.

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

FEES REQUESTED

<u>General Case Administration:</u> Applicant spent 30.40 hours in this category. Applicant sought numerous settlement agreements with both the Client and GNN ("Lender").

<u>Tax Matters</u>: Applicant spent 5.40 hours in this category, Applicant collected the non-exempt tax refunds of $7,610.00. Dckt. 157.

<u>Adversary Proceedings:</u> Applicant spent 24.50 hours in this category. Applicant litigated to resolve issues surround Debtor's lottery winnings and post-petition transfer of real property.

<u>Asset Analysis and Recovery of the Estate:</u> Applicant spent 8.30 hours in this category. Applicant obtained an order for the eventual turnover of the Residence. Dckt. 157.

<u>Asset Disposition:</u> Applicant spent 21.60 hours in this category. Applicant employed a real estate broker to sell the Residence. Dckt. 157. Applicant negotiated with Debtor to vacate the property in exchange

for the homestead exemption. *Id.* Settlement with the Client was approved and the Residence sold; moreover, Applicant negotiated with Lender, to pay them a portion of the sale proceeds. *Id.*

Fee/Employment Application: Applicant spent 6.70 hours in this category. Applicant performed a review of this case and prepared a declaration for multiple Appointment Motions.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $428,810.00	$21,440.50
Calculated Total Compensation	**$27,190.50**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$**27,190.50**
Less Previously Paid	$0.00
Total First and Final Fees Requested	$**27,190.50**

Applicant also requests reimbursement of $141.93 in expenses, including certified copy court fees, recording fees, and postage. Dckt. 156, Exhibit B.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $27,190.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

EXPENSES ALLOWED

First and Final Costs in the amount of $141.93 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has approximately $100,000.00 of unencumbered monies to be administered. The Chapter 7 Trustee provided general case administration, asset analysis, recovery and disposition, and litigation.

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

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

Fees	$27,190.50
Costs and Expenses	$141.93

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

IT IS ORDERED that Michael D. McGranahan is allowed the following fees and expenses as trustee of the Estate:

Michael D. McGranahan, the Chapter 7 Trustee

Fees in the amount of $27,190.50
Expenses in the amount of $141.93,

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

2. 20-90115-E-7 PEQ-2	ALI MUTHANA Gurjeet Rai	MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN, BAKER & OAKES, LLP, ACCOUNTANT(S) 3-30-23 [165]

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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ---------------------------------.

The Motion for Allowance of Professional Fees is granted.

Ryan, Christie, Quinn, Baker & Oakes, LLP, the Accountant ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 21, 2022, through February 28, 2023. The order of the court approving employment of Applicant was entered on October 28, 2022 and went into effect on September 21,2022. Dckt. 110. Applicant requests fees in the amount of $8,340.00 and costs in the amount of $140.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include filing bankruptcy estate tax returns, examining the books and records of the Debtor, and rendering advice regarding Debtor's financial condition. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.4 hours in this category. Applicant's time spent included a telephone discussion with the Chapter 7 Trustee regarding an overview of the case, a review of the list of creditors to assure an absence of any potential conflict of interest, preparation of the employment application and the preparation of the subject request for fees and costs. Declaration, Dckt. 168

Tax Related Issues: Applicant spent 19.4 hours in this category. Applicant's time spent included the review of the debtor's prior tax returns, multiple discussions with the Trustee and Attorney's for Trustee regarding the determination of Debtor's tax basis in the subject property real estate, preparation of tax projections, reviewing closing escrow statements, preparation of the debtor's bankruptcy estates' federal and state trust tax returns, preparation of letters to the IRS and FTB. Declaration, Dckt. 168.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Paul E. Quinn, Accountant	27.8	$300.00	$8,340.00
Total Fees for Period of Application			$8,340.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $140.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies and Postage	N/A	$140.00
Total Costs Requested in Application		$140.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $8,340.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs & Expenses

First and Final Costs in the amount of $140.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$8,340.00
Costs and Expenses	$140.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn, Baker & Oakes, LLP ("Applicant"), Accountant for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Ryan, Christie, Quinn, Baker & Oakes, LLP is allowed the following fees and expenses as a professional of the Estate:

Ryan, Christie, Quinn, Baker & Oakes, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $8,340.00
Expenses in the amount of $140.00,

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

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

3. [20-90115](#)-E-7 [WF](#)-13	**ALI MUTHANA** **Gurjeet Rai**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)** **3-30-23 [158]**

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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ---------------------------------.

The Motion for Allowance of Professional Fees is granted.

Wilke Fleury LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 26, 2021, through March 15, 2023. The order of the court approving employment of Applicant was entered on February 19, 2021, and their services were made effective as of January 18, 2021. Dckt. 30. Applicant requests fees in the amount of $159,000.00 and costs in the amount of $6,000.00, after voluntarily reducing its billings from $184,106.50 for fees and $6,376.39 for costs. Dckt. 158.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration, asset analysis and recovery regarding Debtor's undisclosed lottery winnings and real property purchased with their winnings, avoidance action analysis, and fee and employment applications. In this case, the Trustee had recovered $478,810 to be administered. The Estate has $298,318.29 of unencumbered monies to be administered as of the filing of the application, according to the Ch. 7 Trustee's separate Motion for Compensation. Dckt. 154. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 60.30 hours in this category. Applicant completed case intake and analysis, communicated with creditors, investigated lottery winnings, and participated in hearings to revoke Debtor's discharge.

Asset Analysis and Recovery: Applicant spent 56.90 hours in this category. Applicant represented the Trustee on the sale of property located at 2022 White Fall Court, Ceres, California. Applicant assisted in negotiating and finalizing a rental agreement between the Debtor and the estate concerning the subject property, pending marketing and sale.

Avoidance Action Analysis: Applicant spent 292.10 hours in this category. Applicant represented and advised Trustee in the adversary proceeding to avoid and recover the 2022 White Fall Court property. Services included the preparation of a complaint, an amended complaint, two depositions, written discovery, one mediation, two motions for summary judgment, and a pretrial statement.

Fee and Employment Applications: Applicant spent 17.20 hours in this category. Applicant prepared an initial application for the approval of its employment, coordinated the employment of Trustee's accountant and broker, and prepared this fee application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Kathryne E. Baldwin, Attorney - 2022 rate	2.10	$330.00	$693.00
Sharon R. Brazell, Paralegal - 2021 rate	0.40	$190.00	$76.00
Daniel L. Egan, Attorney - 2021 rate	76.10	$450.00	$34,245.00
Daniel L. Egan, Attorney - 2022 rate	155.10	$475.00	$73,672.50
Daniel L. Egan, Attorney - 2023 rate	63.80	$495.00	$31,581.00
Jason G. Eldred , Attorney - 2022 rate	115.40	$345.00	$39,813.00
Jason G. Eldred, Attorney - 2023 rate	9.60	$360.00	$3,456.00
Mustafa R. Karim, Unknown Professional - 2022 rate	3.00	$190.00	$570.00
Total Fees for Period of Application			$184,106.50

Applicant has voluntarily reduced their request for fees to $159,000.00. Dckt. 158.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $6,000.00 pursuant to this application. Applicant has voluntarily reduced their request for costs from $6,376.39, as computed below. The costs detailed in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Attorney Services		$2,309.60
Certified Copies		$12.00
Court Reporter Fees		$2,942.30
Federal Express		$113.48
Bankruptcy Court Filing Fees		$538.00

Postage		$143.16
Photocopies		$114.10
Recording Fees		$203.75
Total Costs Requested in Application		$6,376.39

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $159,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $6,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$159,000.00
Costs and Expenses	$6,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Wilke Fleury LLP ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Wilke Fleury LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke Fleury LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $159,000.00
Expenses in the amount of $6,000.00

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION TO ABANDON**
FWP-13 **Pro Se** **4-8-21 [1410]**

4 thru 5

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Abandon is xxxxxx.

APRIL 20, 2023 HEARING

At the hearing xxxxxxxxxxxxxx.

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and

7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwarzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwarzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwarzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwarzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

<u>Bifurcated Abandonment of the Murphy Ranch Properties</u>

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

September 8, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

OCTOBER 17, 2022 HEARING

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

DECEMBER 15, 2022 HEARING

On December 13, 2022, Focus Management Group USA, Inc., the Chapter 11 Plan Administrator filed in updated Status Report. Dckt. 1805. The Plan Administrator reports that American AgCredit has confirmed that the issues relating to the Lot Line Adjustment have resolved and the adjustment has been completed.

The Plan Administrator reports that with that completed, the Parties can proceed with a global settlement. The Plan Administrator requests that the hearing on this Motion be continued to the court's January 26, 2023 Calendar so that the Plan Administrator and the other parties can continue with the global negotiations.

At the hearing, counsel for the Plan Administrator reported that the global settlement negotiations were proceeding and the Parties agreed to continue this hearing.

JANUARY 26, 2023 HEARING

As of the court's January 25, 2023 review of the Docket, no updated status report had been filed or information about whether the Plan Administrator would or could proceed with the abandonment.

At the January 26, 2023 hearing, counsel for the Plan Administrator reported that the timing of events have been driven by dealings with Arambel.

The Murphy Ranch property in this case is part of the global settlement in the various related cases.

The Plan Administrator requested a continuance to allow the parties to wrap up their settlement discussions.

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 Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 Abandon is xxxxxxxxx.

5. **18-90029-E-11** **FWP-26** | **JEFFERY ARAMBEL** **Pro Se** | **MOTION TO USE CASH COLLATERAL** **4-6-23 [1852]**

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 in Possession (*pro se*), Debtor in Possession's Former Attorneys], creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2023. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is granted.

Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC ("Summit"). Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor's business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

A. Plan Expenses in accordance with the Stipulated Budget such as insurance and professional fees for the time period April 1, 2023, through June 30, 2023.

B. A windup period if the estate is fully administered at that time as may be extended by Summit's further stipulation.

The use of cash collateral is authorized for the expenses as set forth in the Budget filed as Exhibit 1 (Dckt. 1855), filed in support of the Motion and incorporated herein by this reference.

APPLICABLE LAW

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

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> (A) such sale or such lease is consistent with such policy; or
>
> (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
>
> (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
>
> (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for the period April 1, 2023, through June 30, 2023, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by the Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling. The Cash Collateral Budget; Exhibit 1, Dckt. 1855; shall be attached to the proposed order as an Addendum and incorporated therein.

6.	**18-90030-E-11** **FWP-2**	**FILBIN LAND & CATTLE CO., INC.** **Peter Fear**	**CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN** **12-9-21 [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.

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, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Order in Aid of Execution of the Plan 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 Entry of Order in Aid of Execution of Plan is xxxxx.

APRIL 20, 2023 HEARING

At the hearing, XXXXXXX.

REVIEW OF MOTION

On October 20, 2022, Focus Management Group, USA, the Plan Administrator in the Arambel Case, filed an updated Status Report. Dckt. 548. The Plan Administrator reports that while the parties have negotiated possible resolution terms, no settlement has been finalized. The reasons for being unable to finalize a settlement are stated to include:

> (1) the IRS inadvertently sent tax refund checks for the Arambel Plan Estate to Mr. Arambel, but Mr. Arambel has turned over those monies of the Arambel Plan Estate to the Plan Administrator;
>
> (2) Summit has been focused on a sale of the Business Park property that was abandoned to the Debtor in May 2021, but that sale failed in September 2022; and
>
> (3) Summit and Mr. Arambel are continue in their negotiations which may obviate the need for a sale of the Business Park.

The Plan Administrator requests a further continuance.

At the hearing, the Parties requested that the court to continue the hearing to 2:00 p.m. on January 26, 2023.

Much of the grounds for the continuance are stated to be based on all the work being done by Summit in working with the Jeffery Arambel to achieve a global forbearance agreement to avoid (at least for now) foreclosures by Summit.

JANUARY 26, 2023 HEARING

The court's review of the Docket in this Case on January 25, 2023, disclosed that no updated information about this Motion has been filed.

The Plan Administrator requested a continuance to allow the parties to wrap up their settlement discussions.

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 Entry of Order in Aid of Execution of Plan filed by Focus Management Group, USA, Inc., the Arambel Chapter 11 Plan Administrator having

been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion for Entry of Order in Aid of Execution of Plan is XXXXXXXX.

7. **22-90041-E-7** **AREA X INC.** **CONTINUED ORDER TO SHOW CAUSE**
RHS-1 **David Johnston** **6-29-22 [56]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditors, Former Debtor in Possession, Former Debtor in Possession's Attorney, Responsible Representative of the Debtor and Former Debtor in Possession, U.S. Trustee, and other parties in interest as stated on the Certificate of Service on July 1, 2022. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause to address why the court should not Order the Immediate Conversion of the Bankruptcy Case to one under Chapter 7 based on numerous concerns.

The Order to Show Cause is xxxxx.

April 20 ,2023 Hearing

At the hearing, xxxxxxxxxxx.

ORDER TO SHOW CAUSE

Area X, Inc., the Debtor, commenced this bankruptcy case on February 7, 2022. On June 16, 2022, the court conducted a hearing on the Motion for Authority to Sell Property of the Bankruptcy Estate that was filed by Area X, Inc., serving as the Debtor in Possession. The court's ruling on that Motion raises several very serious issues for the Debtor in Possession and it's Responsible Representative Neftali Alberto (its president) concerning their conduct as the fiduciary of the Bankruptcy Estate. These issues, as stated in the court's ruling set for in the Civil Minutes, include:

A. The Purchase Agreement names a nonexistent entity as the Purchaser.

B. The Purchase Agreement is purported to be signed by a representative of the nonexistent entity. There is a largely illegible signature, with there being no date and no printed name for the purported representative of the nonexistent entity. The signature of the purported representative is right above the typed name of the nonexistent entity.

C. It was unexplained how a representative of the purported real buyer would sign the Purchase Agreement as a representative of a nonexistent entity.

D. Debtor in Possession's counsel reported at the hearing that Neftali Alberto, the fiduciary Responsible Representative, knew the name of the Purchaser on the Purchase Agreement was not correct, but instructed counsel to file it anyway, and that an amended purchase agreement would be generated.

E. In the Motion For Authority to Sell Property, counsel for the Debtor in Possession noted that the purchaser named in the Motion was not the same as in the Purchase Agreement and an amended purchase agreement would be executed.

F. No amended purchase agreement was generated.

G. The fiduciary Responsible Representative of Debtor in Possession presented the court with no evidence of the Property having been marketed, or why a sale put together by the Responsible Representative was commercially reasonable.

H. While the Debtor's pre-petition business, under the management of Neftali Alberto, is stated to have been the buying and selling of real property, such business operations drove the Debtor into bankruptcy, notwithstanding a thriving real estate market and soaring real estate prices.

I. It was not explained how Neftali Alberto, who testified in his declaration that he had been a licensed real estate for eight years, would draft a Purchase Agreement to name a nonexistent entity as the Purchaser.

J. The Purchase Agreement identifies the Seller as the Debtor, not the fiduciary Debtor in Possession. No explanation was provided for how Neftali Alberto, the fiduciary Responsible Representative, and counsel for the Debtor in Possession could make such a mistake and then prosecute the Motion For Authority to Sell Property pursuant to the Purchase Agreement in which the Debtor was the Seller.

K. Subsequent to filing the Motion For Authority to Sell Property for $185,000.00, Neftali Alberto, as the representative of the Debtor, stated under penalty of perjury that the Property actually has a value of $250,000.00 (Schedule A/B filed on June 2, 2022, and the Motion to Sell filed on May 12, 2022). The question left hanging in the air is where was that "extra" $65,000.00 suppose to go.

Civil Minutes; Dckt. 52.

Primo Farms, LLC Bankruptcy Case

Primo Farms, LLC is an entity (represented by the same counsel as Area X, Inc.) that filed a voluntary Chapter 11 case on December 3, 2020. 20-90779. Neftali Alberto is the fiduciary Responsible Representative of Primo Farms, LLC as the debtor in possession in that case, and continues as the fiduciary Responsible Representative under the Confirmed Chapter 11 Plan in the Primo Farms, LLC Bankruptcy Case.

What has come to light in the Primo Farms, LLC case is that Neftali Alberto's cousin (so identified by Primo Farm, LLC's counsel), who is also a member of Primo Farms, LLC, purported to secretly dissolve Primo Farms, LLC after the commencement of its Bankruptcy Case – Clearly a Violation of the Automatic Stay and a Void Act. This had the effect of torpedoing the subsequently confirmed Chapter 11 Plan (the Plan being confirmed on June 10, 2021) and the Plan Estate, and creditors, losing assets. Neftali Alberto stated that he learned of the void purported May 2021 dissolution of the Primo Farms, LLC in July 2021. 20-90770; Declaration, ¶ 4, Dckt. 103.

Neftali Alberto then testifies that he then took advice from an escrow officer to set up a new limited liability company to take over the property of the non-dissolved Primo Farms, LLC (such conduct being in violation of 11 U.S.C. § 362(a) and void). Additionally, Neftali Alberto states that the dissolution paperwork falsely represented that all members agreed to dissolve Primo Farms, LLC and was not proper under applicable state law. No mention is made about Neftali Alberto, the fiduciary Responsible Representative for that Plan Administrator debtor, seeking the advice of Primo Farms, LLC's, the fiduciary Debtor in Possession, bankruptcy counsel or otherwise seeking to subsequently enforce the rights of the Debtor Plan Administrator for such damages inflicted on the Bankruptcy Estate and the Plan Estate.

Having learned of the void purported dissolution of Primo Farms, LLC, the torpedoed Chapter 11 Plan, and the violations of the automatic stay, Responsible Representative Neftali Alberto and the counsel for Primo Farms, LLC, as Plan Administrator, stated that they would just seek to dismiss the Primo Farms, LLC Bankruptcy Case. Such a dismissal could appear to be a tactic to just "sweep under the rug" the gross violation of the automatic stay and the damages done to the Bankruptcy and Plan Estate, and that other background financial transactions were taking place. *Id.*; Declaration, ¶ 13, Dckt. 103; Plan Administrator Status Report, ¶ 5, Dckt. 94.

Bankruptcy Filings by Neftali Alberto

Recently, in connection with the bankruptcy proceedings for the formerly suspended and who resigned his law license in January 2021, former attorney Thomas Gillis, the court noted that Neftali Alberto has filed a number of unsuccessful personal bankruptcy cases. A summary (not exhaustive review) of these prior bankruptcy cases filed by Neftali Alberto personally is:

I. Chapter 13 Case 20-90017

A. Filed January 7, 2020

B. Dismissed March 6, 2020

C. Information in Petition Under Penalty of Perjury

1. Neftali Alberto has a dba of Area X, Inc. *Id.*; Dckt. 1 at 2.

2. Neftali Alberto is the sole proprietor of the business named Area X, Inc. *Id*. at 4.

D. Information in Schedules Under Penalty of Perjury

1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id*.; Schedule A/B, Question 19, Dckt. 1 at 14.

2. No mention is made of Primo Farms, LLC, on Schedule A/B. However, Primo Farms, LLC filed bankruptcy on December 3, 2020, stating:

a. Neftali Alberto was a 50% owner and managing member of Primo Farms, Inc. (Statement of Financial Affairs, Question 28), and

b. That Primo Farms, LLC had been in business since 2015 (Statement of Financial Affairs, Question 25.1)

20-90779; Dckt. 22.

c. In the Primo Farms, LLC case, Neftali Alberto testified under penalty of perjury with respect to his interest in Primo Farms, LLC;

(1) "I was the managing member of Primo Farms, LLC (the "Debtor"), which was registered with the Secretary of State on September 18, 2013, and was in good standing when then the Chapter 11 petition was filed on December 3, 2020. At the time the petition was filed, I owned 50% and Mark McManis ("McManis") owned 50% of the Debtor. In 2020, I had become the managing member of the Debtor. However, from 2013 to 2020, McManis had been the managing member (or president) of the Debtor and maintained its records and books." 20-90779; Declaration, ¶ 1; Dckt. 103.

II. Chapter 13 Case 19-91091

A. Filed December 17, 2019

B. Dismissed January 6, 2020

1. Dismissed for failure to file documents, including the Schedules and Statement of Financial Affairs.

C. Neftali Alberto requested the dismissal of this case.

III. Chapter 13 Case 20-19-90973

A. Filed October 30, 2019

B. Dismissed December 18, 2019

C. Information in Petition Under Penalty of Perjury

1. Neftali Alberto has a dba of Area X, Inc. *Id.*; Dckt. 1 at 2.

2. Neftali Alberto is not the sole proprietor of the business. *Id.* at 4.

D. Information in Schedules Under Penalty of Perjury

1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id.*; Schedule A/B, Question 19, Dckt. 21 at 6.

2. No mention is made of Primo Farms, LLC, on Schedule A/B.

The court has considered the conduct of Neftali Alberto in this case, the presentation of a Purchase Agreement which Neftali Alberto, the fiduciary Responsible Representative of the Debtor in Possession, and the attorney for the Debtor in Possession in knowingly presenting a Purchase Agreement where the "Buyer" was a known nonentity. Further, the Purchase Agreement which was prepared by Neftali Alberto, who states that he was a licensed real estate agent for eight years, is incomplete and purported to be signed by a representative of a nonexistent entity (signing it right above the printed name of the nonexistent entity).

In the Primo Farms, LLC case, even though there is a gross violation of the automatic stay, as the fiduciary Representative of the Debtor in Possession and the Debtor as the Plan Administrator, no action has been taken by Neftali Alberto to rectify the wrong and address the civil damages caused by the gross violation of Federal Law by one of the members of Primo Farms, LLC.

Then, in multiple recently filed Chapter 13 cases, Neftali Alberto has stated under penalty of perjury that his dba is Area X, Inc., and has stated no interest in Primo Farms, LLC, though in other pleadings and on the Primo Farms, Inc. Statement of Financial Affairs he states that his is, and has been, a 50% owner.

ASSETS AND ORDER TO SHOW CAUSE

On the Schedules, signed under penalty of perjury by Neftali Alberto as president of the Debtor, the disclosed assets of Area X, Inc. include:

A. $3,000.00 in accounts receivable.

B. Rouse Avenue Property with a value of $250,000.00.

1. Encumbrances - Schedules and Proofs of Claim

a. On Schedule D, the Debtor lists Jayco Premium Finance of California, dba Jcap Private Lending, Financial Group as having a secured claim of ($176,000.00).

b. Proof of Claim 3-1 filed by JCAP Financial Group assets a claim for ($170,440.86) secured by the Rouse Avenue Property.

(1) In looking at the Note attached to Proof of Claim 3-1, the signatory for Area X, Inc. is a person named Israel Albert, signing it on what appears to be August 3, 2020.

(2) In response to Question 28 on the Statement of Financial Affairs, Neftali Alberto is listed as the 100% shareholder, President, and Director, with no other persons listed. Dckt. 20 at 21.

c. Proof of Claim 6-1 filed by Creditor Debra Koftinow asserts a claim for ($20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference below in ¶ B.1.b. (3)).

d. A computer printout filed as Proof of Claim 9-1 asserts that Stanislaus County has a secured claim for ($2,269.84).

Using the value of $250,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately $25,000.00 of equity for creditors with unsecured claims (assuming payment of the Koftinow judgment lien is paid from the sale of the Rouse Avenue Property).

C. Brady Avenue Property with a value of $350,000.00.

1. Encumbrances - Schedules and Proofs of Claim

a. Encumbrances of ($385,000.00) on Schedule D for Cary Hahn, ($115,000.00) for Debra Kofinow, and ($1,500.00) for Stanislaus County.

b. No Proof of Claim has been filed by Cary Hahn.

c. Proof of Claim 5-1 filed by Creditor Debra Koftinow, secured by the Brady Avenue Property asserts a claim for ($148,617.25).

d. Proof of Claim 6-1 filed by Creditor Debra Koftinow asserts a claim for ($20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference above in ¶ B.1.a.(3)).

e. A computer printout filed as Proof of Claim 8-1 asserts that Stanislaus County has a secured claim for ($17,043.48).

Using the value of $350,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately $140,000.00 of equity for creditors with unsecured claims (assuming payment of the Koftinow judgment lien being paid from a sale of the Rouse Avenue Property). However, if Cary Hahn, who has not filed a proof of claim, though being provided notice of this Bankruptcy Case, has a claim secured by this property, then there would be no unencumbered value for the bankruptcy estate.

D. Counterclaim of unknown value against Mark McManis, the member of Primo Farms, LLC who is stated to have violated the automatic stay and torpedoed the confirmed Chapter 11 Plan by purporting to dissolve Primo Farms, LLC during its Chapter 11 case.

Based on the financial information provided by Neftali Alberto under penalty of perjury in the Schedules, there are substantial assets to be administered in this Bankruptcy Case. However, that property needs to administered by a fiduciary of the Bankruptcy Estate, acting in the interests of the Bankruptcy Estate.

Unfortunately, the Debtor in Possession and the fiduciary Responsible Representative Neftali Alberto have demonstrated that such duties are beyond their abilities. Neftali Alberto has "struggled" in his own multiple personal bankruptcy cases and in the Primo Farms, LLC Bankruptcy Case. It also appears that Neftali Alberto is "challenged" when providing asset and financial information under penalty of perjury.

Based on such conduct, cause exists pursuant to 11 U.S.C. § 1112(b), § 105(a) ("No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.")

Before taking such action, the court affords all parties to Show Cause why this case should not be converted to one under Chapter 7. While, based on the asset information and values provided by Alberto Neftali (a former licensed real estate agent and self proclaimed experienced real estate transaction person) that there is significant equity for creditors with unsecured claims (after payment of costs of sale, secured claims, and administrative expenses), it may be that the finances for the above properties are tight for administration by a Chapter 7 trustee. The court notes in the past that savvy Chapter 7 trustees have been able to "educate" creditors with liens on properties of the "special powers" of a Chapter 7 trustee to promptly sell property rather than a creditor having to go through a foreclosure sale, pay additional property taxes, pay additional insurance, pay additional security, hire a real estate broker, and delay for a good six months the sale of the encumbered property. Of course, the savvy Chapter 7 trustee obtains a modest carve-out of the encumbered sales proceeds for the bankruptcy estate to generate monies to pay something to creditors (not merely the Chapter 7 trustee and counsel fees).

Or it may be that there is little to administer and the Chapter 7 trustee is left without assets to do anything than abandon the property. Fortunately, in such cases the taxpayers fund the Office of the U.S. Trustee who has standing in bankruptcy cases to review what is going on, investigate, and take action in the bankruptcy case (in addition to any possible referrals to the U.S. Attorney). Merely because a debtor may have lost/destroyed the value of assets, such does not grant an "exemption" from having to comply with Federal Law. To the extent that there are issues relating to proper filing and prosecution of bankruptcy cases, the U.S. Trustee is equipped and empowered to address such issues.

Neftali Alberto's Response

On July 21, 2022, Neftali Alberto ("Alberto") filed a response (Dckt. 68) opposing the corrective sanction and Alberto's OSC Declaration.

In the Response, it is argued that is was an unintentional error in misnaming the purchaser in the Purchase Agreement, noting that in the Motion for Authorization to Sell the error was noted. Response, ¶ 3; Dckt. 68.

It is next argued that Neftali Alberto did not prepare the sales agreement, but that some Unidentified Real Estate Agent who was Working Without Compensation prepared the Purchase Agreement. The Invisible Unidentified Real Estate Agent who was Working For Free, who also owed fiduciary duties to the bankruptcy estate remains unidentified. *Id.*, ¶ 4.

The Response argues that the Unidentified Real Estate Agent is the one who put the wrong name of the purchaser in the Purchase agreement also obtained the signature of Hector Aguliar. *Id.*, ¶ 4

It then states that when Neftali Alberto, the fiduciary responsible representative of the bankruptcy estate, was unaware of the true name of the purchaser when he forwarded it to the Debtor in Possession's attorney. *Id.*, ¶ 5. It appears to state that Mr. Alberto never did business with the purchaser, indicating that he may well have never negotiated the sale terms. [FN. 1.]

FN. 1. The court notes that in working to get the sale of the Property approved by the court, for which the Purchase Agreement identified a non-existent entity and no addendum or amended purchase agreement was filed with the court, Mr. Alberto's second declaration in support of the Motion to Sell, include testimony that:

> 2. I have negotiated a sale of real property commonly known as 1609 Rouse Avenue, Modesto, Stanislaus County, California (the "Real Property"), to Adroit Farm Services Inc., a California corporation ("Adroit").

Alberto Sale Declaration 2, ¶ 2; Dckt. 50. This appears to indicate that Mr. Alberto was personally and directly involved in negotiating the proposed sale to Mr. Aguilar's company.

In this Sale Declaration 2, Mr. Alberto states that he personally knows that "The Debtor in Possession and [Adroit Farm Services, Inc.] have agreed that the close of escrow will take place no later than seven days after an order authorizing the sale becomes final." *Id.*, ¶ 5. This indicates that he was personally involved in communicating with the purchaser.

This is consistent with Mr. Alberto's Sale Declaration 1, in which he states that "I have negotiated the sale of the real property . . . ." Alberto Sale Declaration 1, ¶ 2; Dckt. 36.

It is then argued that counsel for the Debtor in Possession obtained the correct name of the purchaser from the Unidentified Real Estate Agent and used that name in the Motion. *Id.* ¶ 6.

An Addendum to the Purchase Agreement was prepared, but nobody, neither the Unidentified Real Estate Agent nor Neftali Alberto, the Responsible Representative of the Debtor in Possession, *Id.* ¶ 7.

The Response also notes that the Purchase Agreement prepared by the Unidentified Real Estate Agent, who purportedly was working for free, did not list the Debtor in Possession as the seller but the Debtor. This is "excused" as having been done by the Undisclosed Real Estate Agent and of no real significance in that the Motion to Sell identified the Debtor in Possession as the Seller. *Id.*, ¶ 8. This appears to argue that the parties identified in the Purchase Agreement are of no legal significance.

The Response concludes that nobody objected to the Motion to Sell, not even the U.S. Trustee, apparently indicating that the misidentifications are of little significance. *Id.*, ¶ 9.

Neftali Alberto, the Responsible Representative for the fiduciary Debtor in Possession has filed his Declaration in support of the Response. Dckt. 69. Mr. Alberto's testimony appears to be a word for word cut and paste of the arguments in the Response prepared by counsel for the Debtor and former Debtor in Possession.

In his Declaration, Mr. Alberto carefully avoid disclosing the identity of the Unidentified Real Estate Agent who is purportedly to blame for the misidentification, the errors in the Purchase Agreement, and the failure to present the Addendum to counsel for the Debtor in Possession and to the court.

Hector Aguilar's Response

On July 27, 2022, Hector Aguilar ("Aguilar") filed a Response. Dckt. 71. The Response appears to be a hybrid Response and Declaration, in which Mr. Aguilar states he is signing it under penalty fo perjury. Mr. Aguilar's counsel has not signed the Response.

Mr. Aguilar's Response under penalty of perjury provides some additional, and some conflicting information to that provided by Mr. Alberto and counsel for the Debtor and former Debtor in Possession. The information provided by Mr. Aguilar includes:

A. Mr. Aguilar states that he did not sign the Purchase Agreement, and never signed such Agreement as the authorized representative of a non-existent entity. Response, ¶ 3; Dckt. 71.

B. Mr. Aguilar states that he could not understand why he was served with the Order to Show Cause. *Id.*, ¶ 4.

C. After meeting with counsel, Mr. Aguilar learned that he was being identified as the person who signed the Purchase Agreement. *Id.*, ¶ 5.

D. He further states that he was never served with the Motion to Sell. *Id.*

E. Mr. Aguilar goes further, stating that his purported signature on the Purchase Agreement is not his signature. *Id.*, ¶ 6.

F. Mr. Aguilar states that he had done business before with Neftali Alberto, with the last transaction being in 2016. *Id.*, ¶ 7. Mr. Aguilar states that the 2016:

> [b]usiness transction did not end well and based on this experience, I have refrained from doing business with Neftali Alberto, even though he continues to contact me regarding possible business ventures.

Id. This appears to conflict with Neftali Alberto's statement under penalty of perjury that the he never did any business with the purchaser – Mr. Aguilar's business

G. Mr. Aguilar unequivocally states:

a. "I did not sign the agreement . . ."

b. "Nor did I have knowledge of the agreement"

Id., ¶ 9.

August 4, 2022 Hearing

The court is being presented with conflicting testimony presented under penalty of perjury and subject to the certifications pursuant to Federal Rule of Bankruptcy Procedure 9011. There is the direct statement under penalty of perjury that Hector Aguilar's never signed the Purchase Agreement.

Then, there is an Undisclosed Real Estate Agent purporting to act for the Debtor in Possession who is being fingered as being responsible for all of the errors in the Purchase Agreement and for not providing the Addendum to counsel for the then Debtor in Possession.

Clearly much more information is required.

At the hearing, counsel for the Debtor and former Debtor in Possession said they have evidence of many phone calls made by Mr. Alberto, the Responsible Representative of the Debtor in Possession, with Mr. Aguliar, stating that many of these related to the sale.

The identity of the formerly unidentified realtor is Cameron Sparks. Mr. Aguliar's counsel asserted that Mr. Sparks is a business partner of Mr. Alberto.

It was further stated at the hearing by counsel for the Debtor and former Debtor in Possession that Mr. Alberto, as the Responsible Representative of the Debtor in Possession, is the person who signed Mr. Aguliar's name to the Purchase Agreement. Mr. Alberto asserts that Mr. Aguliar authorized him to sign Mr. Aguliar's name to the Purchase Agreement.

These statements attributed to Mr. Alberto are in conflict with Mr. Alberto's testimony under penalty of perjury that:

> The real estate agent filled in the buyer's incorrect name and obtained the signature of Hector Aguilar as the representative of the buyer before I signed the agreement.

Declaration, ¶ 5, p.2:21-23; Dckt. 69. In the above testimony Mr. Alberto clearly testifies under penalty of perjury that the real estate agent obtained Mr. Aguilar's signature. As of the July 21, 2022 filed Declaration, Mr. Alberto clearly states that Mr. Aguilar signed the Purchase Agreement, not that Mr. Alberto signed Mr. Aguilar's name to the Purchase Agreement.

Mr. Aguilar's counsel argued that no such authorization had been given by Mr. Aguilar and that Mr. Aguilar (as he has testified) had no knowledge of the Purchase Agreement. In looking at the Purchase Agreement it does not purport to have been signed by an authorized agent of Mr. Aguilar, but by Mr. Aguilar himself. As the court has noted before, Mr. Alberto is not only an experienced real estate investor, but was licensed for eight years as a real estate agent, and presumably knowledgeable in how real estate contract are properly executed.

While Mr. Aguliar expressed frustration that he is having to incur costs and expenses in addressing the Order to Show Cause, the court has testimony under penalty of perjury that he was aware of the Purchase Agreement, authorized it to be executed, and was in contract to purchase the Property. Mr. Aguliar provides counter-testimony, which if believed, would render the other testimony under penalty of perjury is false.

For the court to determine which person has made false statements under penalty of perjury, an evidentiary hearing is required. The court continues the hearing for a Scheduling Conference, affording the Parties to conduct discovery and assemble the evidence for such evidentiary hearing.

JANUARY 12, 2023 STATUS AND SCHEDULING CONFERENCE

As addressed below, the court has been presented with completely opposite testimony under penalty of perjury by two parties in this Bankruptcy Case. Additionally, that Neftali Alberto, the principal of this Debtor and the debtor/debtor in possession in other cases and a bankruptcy debtor himself provided false information under penalty of perjury on the various Schedules.

A review of the Docket for this Case on January 10, 2023, discloses that no motions have been filed by the Chapter 7 Trustee or the U.S. Trustee (who may have to act given that the bankruptcy estate may be devoid of liquid assets) addressing the conflicting statements under penalty of perjury, the status of any discovery, and recommendations on his this matter should proceed.

At the January 12, 2023 Status and Scheduling Conference, counsel for Hector Aguilar reported that she and counsel for the Debtor and Neftali Alberto are working on an agreed statement of facts. Further, that she is working to come to an agreement that would result in Mr. Aguilar being dismissed from the Order to Show Cause.

The Parties requested a continuance of sufficient time for them to address these matters. The hearing is continued to 10:00 a.m. on March 23, 2023, specially set to be hear in the Sacramento Division courthouse. Telephonic appearances are permitted for the continued hearing.

The court noted that in light of the Parties working together, they may also consider a proposed resolution/sanction that would be paid. The amount would be sufficient for the court to believe that the person paying the sanction understands the significant of making statements under penalty of perjury, but not so large as to being an excessively burdensome sanction bordering on punitive.

As with the philosophy of former President Barack Obama, such proposed resolution would be sufficient to show that this has been a constructive "teachable moment," and that such conduct would not be repeated, either intentionally or sloppily.

March 23, 2023 Hearing

As of the court's March 22, 2023 review of the Docket, no stipulated facts, request for discharge of the Order to Show Cause, or proposed sanctions have been filed.

At the hearing, counsel for the Debtor reported that they have an agreement to resolve the Order to Show Cause. They have a joint statement of facts, Mr. Alberto will pay $1,000.00 in Sanctions, and Mr. Alberto will also pay up to $1,500.00 in Mr. Agruilar's attorney's fees. It is reported that in the agreed statement of facts, Mr. Alberto acknowledges is responsibility for the shortcomings in what has been done and the contract.

The court continues the hearing to allow the Parties to have their Agreement and Joint Statement of Facts filed with the court.

JOINT STATEMENT OF FACTS

Mr. Alberto and Aguilar filed a Joint Statement of Facts in response to the Order to Show Cause. Dckt. 126. Mr. Alberto and Aguilar submit the following:

1. Debtor was the Debtor in Possession while the case was in Chapter 11. Mr. Alberto was the president of Debtor and its sole shareholder.

2. Mr. Alberto used the services of a Cameron Sparks to draft a contract where the Property would be sold.

3. The contract erroneously stated the buyer would be Adroit FS. LLC, rather than Adroit Farm Services Inc.

4. Adroit Farm Services Inc. was owned by Mr. Aguilar.

5. When Debtor in Possession's attorney drafted the motion to sell, they were unable to find Adroit FS, LLC. Mr. Alberto advised Debtor in Possession's attorney the correct name. Mr. Alberto agreed to an addendum of the correct name, but did not disclose that Mr. Aguilar had not yet agreed to purchase the Property.

6. Mr. Alberto signed Mr. Aguilar's name without authorization.

7. Neither Mr. Aguilar nor Adroit Farm Service, Inc. agreed to the sale.

8. Mr. Alberto did not disclose to Debtor in Possession's attorney that Mr. Aguilar did not agree to the sale.

9. Mr. Alberto did not disclose to Mr. Aguilar the Motion to Sell.

10. Mr. Alberto and Aguilar agree to the following corrective sanctions:

11. Mr. Alberto should pay the court $1,000.00.

12. Mr. Alberto should reimburse Mr. Aguilar up to $1,500.00 for attorney's fees in response to the Order to Show Cause.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause Re Sanctions is xxxxx.

8. **22-90443-E-7** **DANETTE LANDY** **MOTION TO REDEEM**
SSH-1 **Simran Singh Hundal** **3-13-23 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 14, 2023. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 Redeem is ~~granted~~.

Danette Kay Landy ("Debtor") seeks to redeem a 2006 Volvo V70, VIN # ***47065 ("Property") from the claim of OneMain Financial Group, LLC ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Danette Kay Landy. Debtor seeks to value the Property at a replacement value of $2,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank*

(In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Additionally, the Declaration of Danette Kay Landy states Creditor has agreed to accept $2,000.00 for the Vehicle.

The lien perfected on the Property secures Creditor's claim with a balance of $3,656.34. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of $2,000.00.

The court notes, the Motion states Debtor will pay Creditor the redemption value within 20 days of the order granting the Motion. However, the "True & Correct Copy of Redemption Agreement drafted by Creditor" indicates that Debtor was to pay Creditor in the sum of $2,000.00 "on or before 04/05/23." Dckt. 26, Exhibit A. It is unclear to the court whether Debtor bypassed a court order and has already paid Creditor the redemption value prior to this hearing.

At the hearing XXXXXXXXX

~~The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.~~

~~The court shall issue an order in 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 Redeem filed by Danette Kay Landy ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2006 Volvo V70, VIN # YV1SW592X62547065 ("Property") by paying OneMain Financial Group, LLC , the creditor holding the claim secured by the Property, the total amount of $2,000.00, in full at the time of redemption, which must be paid on or before XXXXX, XX, 2023.~~

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