

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**April 27, 2017, at 10:30 a.m.**

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| 1. <a href="#"><u>16-20852</u></a> -E-11<br>DNL-10 | MATHIOPOULOS 3M FAMILY<br>LIMITED PARTNERSHIP<br>J. Luke Hendrix | MOTION FOR COMPENSATION BY<br>THE LAW OFFICE OF DESMOND,<br>NOLAN, LIVAICH & CUNNINGHAM FOR<br>J. LUKE HENDRIX, DEBTOR'S<br>ATTORNEY(S)<br>3-30-17 [ <a href="#"><u>204</u></a> ] |
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**Final Ruling:** No appearance at the April 27, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Mathiopoulos 3M Family Limited Partnership, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

**April 27, 2017, at 10:30 a.m.**

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Fees are requested for the period February 17, 2016, through February 23, 2017. The order of the court approving employment of Applicant was entered on March 2, 2016. Dckt. 25. Applicant requests fees in the amount of \$53,370.00 and costs in the amount of \$2,109.01.

## **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th

Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney

must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting Applicant's employment application, attending the United States Trustee's Initial Debtor Interview, attending the First Meeting of Creditors, dealing with cash collateral agreements between Client and Wells Fargo, drafting a settlement agreement between Client and Anytime Fitness, drafting multiple status reports and appearing at conferences, preparing an application to employ GTR Tax Planning & Preparation, advising about claims, options, and strategy, preparing disclosure statement and Chapter 11 Plan, amending bankruptcy schedules, and assisted in subsequent correlated respondent with Client and necessary parties regarding this case. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 26.20 hours in this category. Applicant attended the United States Trustee's Initial Debtor Interview and assisted Client with responding to various requests by the United States Trustee, attended the First Meeting of Creditors, drafted multiple status reports and appeared at multiple status conferences regarding the status of the Chapter 11 proceedings, assisted Client in filing amended bankruptcy schedules, advised Client regarding general case administration throughout the case, including Client's obligation as a debtor in possession, and conducted subsequent related correspondence.

Cash Collateral and Related Matters: Applicant spent 34.50 hours in this category. Applicant communicated with Client and Wells Fargo regarding cash collateral needs to preserve the Penryn Property, negotiated several cash collateral agreements, prepared motion to approve use of cash collateral and five supplemental requests, advise Client regarding its obligations with respect to cash collateral and related agreements, and conducted subsequent related correspondence.

Tenant Disputes and Related Matters: Applicant spent 21.10 hours in this category. Applicant drafted settlement agreement between Client and Anytime Fitness resolving the lease dispute, and conducted subsequent related correspondence to resolve matters concerning Anytime Fitness and the Penryn Property.

Case Strategy and Plan Considerations: Applicant spent 67.70 hours in this category. Applicant advised Client regarding claims against Client, prepared disclosure statement, prepared the Chapter 11 Plan, communicated with counsel for Wells Fargo regarding their claim and resolutions, and conducted subsequent related correspondence.

Employment and Fee Applications: Applicant spent 14.10 hours in this category. Applicant drafted Applicant's, GTR Tax Planning & Preparation's, Bachecki's employment on behalf of Client. Applicant also 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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russell Cunningham, Attorney	2.0	\$425.00	\$850.00
J. Luke Hendrix, Attorney	161.60	\$325.00	\$52,520.00
<b>Total Fees For Period of Application</b>			<b>\$53,370.00</b>

### Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,109.01 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage		\$778.51

Photocopies	\$0.05	\$1,204.00
Faxes		\$4.00
Advances (i.e. parking, recoding/filing fees)		\$122.50
<b>Total Costs Requested in Application</b>		<b>\$2,109.01</b>

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

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$53,370.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

### **Costs & Expenses**

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

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

Fees	\$53,370.00
Costs and Expenses	\$2,109.01

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

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham (“Applicant”), Attorney for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Debtor in Possession

Fees in the amount of \$53,370.00  
Expenses in the amount of \$2,109.01,

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

**IT IS FURTHER ORDERED** that the Debtor in Possession is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

2.	<a href="#"><u>16-20852</u></a> -E-11 DNL-9	<b>MATHIOPOULOS 3M FAMILY LIMITED PARTNERSHIP J. Luke Hendrix</b>	<b>MOTION FOR COMPENSATION FOR BACHECKI, CROM &amp; CO., LLP, ACCOUNTANT(S) 3-30-17 [<a href="#">210</a>]</b>
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**Final Ruling:** No appearance at the April 27, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Bachecki, Crom & Co., LLP, the Accountant (“Applicant”) for Mathioloulos 3M Family Limited Partnership, the Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 4, 2016, through October 27, 2016. The order of the court approving employment of Applicant, including a \$1,500.00 flat fee, was entered on November 6, 2016. Dckt. 134. Applicant requests a flat fee in the amount of \$1,500.00.

## **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.



11 U.S.C. § 330(a)(4)(A). A professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

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

### **Lodestar Analysis**

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

## Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing state and federal income tax returns for the 2015 tax year. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

## FEES REQUESTED

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

Accounting Services: Applicant spent 8.2 hours in this category. Applicant assisted Client with reviewing tax documents provided by Client, preparing 2015 state and federal tax income returns, and subsequent related correspondence.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Jay Crom, Accountant	0.60	\$525.00	\$315.00
Virginia Huan-Lau, Accountant	3.30	\$360.00	\$1,188.00
Paula Law, Accountant	4.30	\$360.00	\$1,548.00
<b>Total Fees For Period of Application</b>			<b>\$3,051.00</b>

Applicant filed a Flat Fee Agreement for Accounting Services on October 6, 2016. Exhibit A, Dckt. 119. That agreement states that Client will agree to pay Applicant a flat fee of \$1,500.00 for any services rendered. The court approved this Flat Fee Agreement in the order approving employment of Applicant as Accountant for Client on November 6, 2016. Dckt. 134.

#### **FEES ALLOWED**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees	\$1,500.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Bachecki, Crom & Co., LLP (“Applicant”), Accountant for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the Debtor in Possession

Fees in the amount of \$1,500.00,

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

**IT IS FURTHER ORDERED** that the Debtor in Possession is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

3. [14-29361](#)-E-7      **WALTER SCHAEFER**  
DNL-23              **Douglas Jacobs**

**MOTION TO SELL AND/OR MOTION  
FOR COMPENSATION FOR CLUB  
HOUSE LOS DELFINES GOLF &  
COUNTRY CLUB, BROKER  
3-27-17 [367]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2017. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Sell Property is granted.</b>
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The Bankruptcy Code permits Kimberly Husted, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica, registered property number 6 0 27402 F 000 ("Property").

The proposed purchaser of the Property is Allen Wulf, and the terms of the sale are:

- A. The Buyer shall purchase the estate's interest in the Property for the purchase price of \$270,000, payable as follows:
  - 1. \$10,000 initial deposit; and
  - 2. The balance of \$260,000.00 due prior to the close of escrow.
- B. Escrow shall close within thirty calendar days of conclusion of the Bankruptcy Court heading approving the sale.
- C. The transfer of the Property shall be "as is" and "where is" without representation or warranty.
- D. The sale is subject to overbidding through conclusion of the sale hearing.
  - 1. The overbidder, prior to or at the hearing on this motion, is required to provide the Movant a deposit by cashier's check in an amount to be determined by the Movant and approved by the court and provide proof of funds for the balance of the purchase price. Any overbidding shall proceed in increments of at least \$1,000.00.

Movant states that the estate's real estate broker, Club House Los Delfines Golf & Country Club, is to be paid in the amount of \$16,200.00 (six percent of the gross sale price) or the appropriate commission resulting from a successful overbid. Movant's application to employ the broker was granted on August 24, 2016. Dckt. 350.

Movant asserts that good cause exists to waive the fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) because Movant does not anticipate any opposition to the Motion. A review of the docket shows, in fact, that no opposition has been filed.

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the broker has aggressively marketed the Property, and the Movant has not received a higher or better offer for the Property. Additionally, the sale price approximates the Property's fair market value.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$16,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

In this case, there has been a prolonged administration of property of the estate, including this Property located in another country. The estate's interests in the Property, and the Trustee's obtaining control over it through various professionals in this country and other country has laid the groundwork for this motion to sell. It is not surprising that there is no opposition. With the sale in place, it is time to complete the sale. Movant has pleaded, and as shown by the files in this case, adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement set by Rule 6004(h), and this part of the requested relief is granted.

### **CHAMBERS PREPARED ORDER**

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

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

The Motion to Sell Property filed by Kimberly Husted, the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kimberly Husted, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Allen Wulf or nominee ("Buyer"), the Property commonly known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica, registered property number 6 0 27402 F 000 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$270,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 371, and as further provided in this Order.
- B. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- C. The Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale, or the appropriate commission resulting from a successful overbid. The six percent commission, or the appropriate commission resulting from a successful overbid shall be paid to the Trustee's broker, Club House Los Delfines Golf & Country Club.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 13, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of First National Bank of Omaha ("Creditor") against property of Jack Weed and Cathi Weed ("Debtor") commonly known as 15631 Archery View, Truckee, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$17,082.18. An abstract of judgment was recorded with Nevada County on March 1, 2010, that encumbers the Property. FN.1.

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FN.1. The abstract of judgment was not attached as an exhibit to this Motion, and neither the Motion nor the Declaration state where it can be found; they do list the document number for the abstract, however. A better practice is for Movant to attach the abstract of judgment as a separate exhibit to the Motion. The court's review of the claims filed in this case reveals that a copy of the abstract is attached to Creditor's Proof of Claim 3. Movant should not rely on the court canvassing all of the documents filed in a case to verify Movant's contentions. It has the even more significant practical effect of providing a double check

on numbers that are transcribed into a declaration or motion, as reenforcing for the court the correct numbers when the court prepares the order.

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Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$300,000.00 as of the date of the petition. The unavoidable consensual liens that total \$384,823.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$10,000.00 on Amended Schedule C.

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

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

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of First National Bank of Omaha, California Superior Court for Nevada County Case No. L75456, recorded on March 1, 2010, Document No. 20100004628, with the Nevada County Recorder, against the real property commonly known as 15631 Archery View, Truckee, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.