

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 13 2021 at 10:30 a.m.

1.	<u>18-90029-E-11</u>	JEFFERY ARAMBEL	MOTION TO ABANDON
	<u>FWP-13</u>	Pro Se	4-8-21 [<u>1410</u>]

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, 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 granted and a final order as provided in Federal Rule of Civil Procedure 54(b), Federal Rules of Bankruptcy Procedure 7054, 9014(c) for the abandonment of the following properties shall be entered:

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.

For the Murphy Ranch 756 and the Murphy 240 Rangeland properties, the court continues the hearing to 10:30 a.m. on ~~xxxxxxx~~, 2021.

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 Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf 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. Schwartzkopf 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. Schwartzkopf 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; and even after abandonment, the Adjustment process may 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 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

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 **XXXXXXX**, 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.

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 Property 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 Compel Abandonment is granted, and the Property identified 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

is abandoned to Jeffery Edward Arambel, by this order, subject to all existing liens, claims and encumbrances as of the date the order granting the Motion is entered, with no further act of the Plan Administrator required.

IT IS ORDERED that pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054 as incorporated into Federal Rule of Bankruptcy Procedure 9014(c) the court bifurcates the relief granted and this is a final order for the relief granted as to the properties identified above.

IT IS FURTHER ORDERED that the relief requested with respect to the Murphy Ranch 756 and the Murphy 240 Rangeland is not now granted, but is the subject of further proceedings in this Contested Matter, with the hearing for such relief for the two Murphy Ranch properties continued to 10:30 a.m. on **XXXXXXX**, 2021.

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, and Office of the United States Trustee on April 16, 2021. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

John W. Reger, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Essex Bank ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Adversary Proceeding 20-02130 concerning the nature of Settlor's interest over \$13,000 (after bank service fees and premiums funds remaining are \$12,400) rendered as payment by Debtor for non-exempt equity in two vehicles and two bank accounts using the Notice of Intent to Sell procedure.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 146):

A. The Estate will pay Settlor \$6,200.00 ("Payment") in full satisfaction of

its Proofs of Claim filed in the Debtor's bankruptcy estate.

- B. Payment is due no later than five (5) days after the bankruptcy court files its order approving the Agreement.
- C. Adversary Proceeding to be dismissed pursuant to Stipulation for Dismissal and an Order for Dismissal filed with the Adversary Proceeding.
- D. After approval of compromise, Movant agrees he will not administer any other scheduled property of the Debtor and will move to close the underlying bankruptcy proceeding.
- E. Settlor agrees it will not file a Notice of Appeal with respect to any of the pending orders in the Adversary between the time this Agreement is signed and the time the Adversary is dismissed.
- F. The obligations of Settlor and Movant under the Agreement are expressly conditioned upon an order approving the compromise
- G. Upon approval of the compromise, dismissal of the Adversary, receipt by Settlor of the Payment and conclusion of the normal bankruptcy administration by the Trustee, Settlor and Movant shall be conclusively deemed to have released each other and to have compromised all potential actions between them and their agents.

DISCUSSION

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

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Movant argues that the question of whether Settlor is secured with respect to the funds in dispute is uncertain and the probability of success is unknown because both sides have arguments in their favor. However, Settlor's claims of malicious prosecution will be virtually impossible to establish.

Difficulties in Collection

This factor is neutral with respect to the proposed settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that this factor favors the compromise because litigation of Movant's and Settlor's claims will require extensive time and effort to litigate and resolve and will quickly consume more in attorney fees than the amount in dispute.

Paramount Interest of Creditors

Movant asserts that this settlement, if approved, will be the sole asset for the Estate to administer and will result in a very small distribution to creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because will resolve the adversary proceeding, the ongoing litigation in the bankruptcy case, and allow Trustee to close this case. The Motion is granted.

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

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

The Motion to Approve Compromise filed by John W. Reger, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Essex Bank ("Settlor") is granted, and the respective rights

and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 146).

3. [16-21585](#)-E-11 AIAD/HODA SAMUEL MOTION FOR COMPENSATION BY
[FWP-46](#) Pro Se THE LAW OFFICE OF FITZGERALD
3 thru 6 WILLOUGHBY PASCUZZI & RIOS LLP
FOR JASON RIOS, TRUSTEES
ATTORNEY(S)
4-15-21 [[1569](#)]

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

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 11 Trustee, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant did not provide the notice required by the Bankruptcy Code and the local rules. At the hearing **xxxxxxx**

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

The Motion for Allowance of Professional Fees is granted.
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Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the Attorney ("Applicant") for Scott M. Sackett, the Chapter 11 Trustee ("Client"), makes a Sixth and Final Request for the Allowance of Fees and Expenses in this case. The fees and costs requested in this motion are fees and costs incurred in defending the Trustee against the civil complaint filed by Debtor Hoda Samuel on August 28, 2018, and as thereafter amended (the "Complaint") in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343 (the "Samuel Litigation").

Trustee filed a Motion for Administrative Expenses [FWP-40] on November 9, 2018 requesting authority to pay the fees and costs incurred in defending himself against Debtor in the Samuel Litigation as administrative expenses out of available funds of the estate or from the Estate Reserve. Dckt. 1292. A Supplement to the Motion was filed on April 15, 2021. Dckt. 1557.

Fees are requested for the period April 1, 2019, through April 14, 2021. The order of the court approving employment of Applicant was entered on May 19, 2016. Dckt. 95. Applicant requests fees in the amount of \$32,283.10 and costs in the amount of \$227.21.

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 services for defending Trustee in the Samuel Litigation; filing administrative claim motions; and drafting and filing of fee applications. 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.

Services for Defending Trustee in Samuel Litigation: Applicant spent 21.9 hours in this category. Applicant provided case administration by reviewing documents related to Samuel criminal case, defended Trustee in litigation and contested matters related to Samuel’s Complaint in front of the District Court, provided case assessment and development related to the filing of a response to an amended prisoner civil rights complaint, and preparing a suggestion of death of H. Samuel to file in the Ninth Circuit appeal and legal review and analysis of applicable Federal Rules of Appellate Procedure.

Administrative Expenses Motions: Applicant spent 19.4 hours in this category. Applicant assisted Trustee with administration of claims and addressed objections by preparing status conference

report; reviewing minutes regarding hearings for administrative expenses motions and orders staying the motions, emailing the Trustee regarding the minutes and stay orders, and preparing for and attending the hearings.

Final Fee Applications: Applicant spent 15.6 hours in this category. Applicant prepared employment and fee applications for Gonzales & Associates, Inc., accountants for the Trustee, and Applicant; and analysis and email to Trustee regarding Gonzales final 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
Jason E. Rios	xxxx.xx	\$425.00	xxxx.xx
Jason E. Rios	xxxx.xx	\$405.00	xxxx.xx
Jennifer E. Niemann	xxxx.xx	\$395.00	xxxx.xx
Lauren Kawano	xxxx.xx	\$325.00	xxxx.xx
Total Fees for Period of Application			\$32,283.10

Here, Applicant did not provide a summary of the time spent by each professional. Although the court was provided with the billing statements for all services provided, the court declines the invitation to review over seventy (70) pages in order to gather the hours each professional spent.

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$55,308.00	\$55,308.00
Second Interim	\$148,235.00	\$148,235.00
Third Interim	\$129,625.00	\$129,625.00
Fourth Interim	\$82,965.00	\$82,965.00
Fifth Interim	\$16,129.50	\$16,129.50
	<u>\$0.00</u>	
Total Prior Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$432,262.50	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$227.21 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$10,504.53.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$18.10
Copying		\$27.10
Searching and Monitoring		\$3.50
Other		\$178.51
Total Costs Requested in Application		\$227.21

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. Sixth and Final Fees in the amount of \$32,283.10 and prior Interim Fees in the amount of \$432,262.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Sixth and Final Costs in the amount of \$227.21 and prior Interim Costs in the amount of \$10,504.53 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 11 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 11 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$32,283.10
Costs and Expenses	\$227.21

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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP (“Applicant”), Attorney for Scott M. Sackett, the Chapter 11 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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, Professional
employed by the Chapter 11 Trustee

Fees in the amount of \$32,283.10
Expenses in the amount of \$227.21,

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

The fees and costs pursuant to this Motion, and fees in the amount of \$432,262.50 and costs of \$10,504.53 approved pursuant to prior Interim Applications, are also allowed as professionals for the Estate.

IT IS FURTHER ORDERED that the Chapter 11 Plan Administrator is authorized to pay the unpaid balance owing, after full credit is given for all interim payment made, on 100% of the fees and 100% of the costs allowed pursuant to order of the court.

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

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 11 Trustee, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

The Chapter 11 Trustee, Scott M. Sackett ("Trustee"), requests payment of administrative expenses in the amount of \$34,420.10 in fees and \$511.60 in costs, incurred during the period of May 19, 2016, to March 31, 2021, where Trustee's counsel represented and defended the Trustee against the Complaint filed by Debtor Hoda Samuel in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343 ("Samuel Litigation").

According to Trustee, the District Court dismissed the Samuel Complaint on March 20, 2020, which was affirmed by the Ninth Circuit on January 4, 2021. Debtor's time for seeking certiorari by the United States Supreme Court has expired.

DISCUSSION

Movant argues that the administrative expenses should be allowed on the basis that (i) payment of such fees and costs is required by the Plan which states that the Estate shall defend, indemnify and hold harmless the Trustee and the Trustee's attorneys for claims and expenses (including attorneys' fees) arising as a result of claims asserted based upon acts related to serving as Trustee in this bankruptcy case, (ii) they are allowed by Bankruptcy Code Sections 330 and 503, and (iii) they are allowed as a result of the Debtor's failure to comply with the Barton Doctrine by failing to obtain leave from the Bankruptcy Court to file the Complaint. The Plan and these other authorities protect the Trustee

and his Counsel from bearing the fees and costs arising from the Samuel Litigation's attack on the administration of the estate the services provided by the Trustee and his counsel to the estate.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate including the wages, salaries, and commissions for services rendered after the commencement of the case[.]" Here, Movant asserts that the services rendered are attorney's fees and costs incurred by the Trustee and Counsel in responding to the Complaint (and related matters) and should be paid because the confirmed Plan expressly provides for payment of this administrative expense and the services were reasonable and necessary to the administration of this case.

The court begins with a review of the confirmed Plan. The Chapter 11 plan was confirmed and the court's order entered on September 27, 2018. Dckt. 1246. As indicated by the Trustee, the relevant provision applicable in this request for administrative expenses is Section 6.8.7, titled Limitation on Liability of the Plan Administrator, which states:

6.8.7 Limitation on Liability of the Plan Administrator: The Trustee and the Plan Administrator and their officers, directors, attorneys, consultants, employees, agents and assignees shall have no liability for any error of judgment or any action taken or omitted made in good faith other than as a result of gross negligence or willful misconduct in connection with, arising under, or related to the Case or the Plan from the Petition Date forward, including but not limited to after the Effective Date. In performing his duties hereunder, the Trustee or the Plan Administrator may consult with counsel selected by him, at the expense of the Estate Funds. No provisions of this Plan shall require the Trustee or the Plan Administrator to expend or risk his own funds or otherwise incur personal financial liability in the performance of any of his duties under this Plan or in the exercise of any of his rights and powers. The Trustee or the Plan Administrator may rely without inquiry upon any writing delivered to him under this Plan which he believes in good faith to be genuine and to have been given by a proper person. **The Estate shall defend, indemnify and hold harmless the Trustee and the Plan Administrator and each of their officers, directors, attorneys, consultants, employees, agents and assignees from any and all claims, damages, liabilities, suits and expenses or any kind or nature (including fees incurred in defending any such claim) which may be imposed or asserted in connection with or arising out of any action, omission, event or transaction arising in connection with the Trustee or the Plan Administrator serving in this Case, except for any action or suit caused by or resulting from gross negligence or willful misconduct of that person or professional.**

Confirmed Plan, Dckt. 1246, 25:24 – 26:3 (emphasis added).

This provision specifically states that the Estate is to defend, indemnify and hold harmless the Trustee and his attorneys for claims and expenses arising out of any action in connection with the Trustee's services in this case. Here, the attorney's fees and costs requested as administrative expenses were incurred as part of defending Trustee against Debtor's Complaint.

Trustee presents evidence that the Debtor's Complaint was based on services rendered by the

Trustee, where the Complaint alleges that Trustee sold four commercial properties at less than the value Debtor believed they were worth, specifically starting “cheap price pennies on the dollars,” to pay the allowed USA restitution judgment. Each commercial property was sold pursuant to a motion to sell filed with the court and authorized by the court.

A summary of the services provided for the requested fees and costs are: reviewing, evaluating, and addressing the (i) four complaints filed by Hoda Samuel in the Samuel Litigation (the original complaint and three amended complaints), (ii) numerous motions for extension of time by Ms. Samuel, and (iii) Ms. Samuel’s appeal of the District Court’s dismissal judgment to the Ninth Circuit. The fees and costs were also incurred for preparing and filing (a) the Trustee’s motion to dismiss the Complaint, (b) the Administrative Claim Motions by the Trustee as FWP-40, (c) multiple status conference reports related to these Administrative Claim Motions and attendance at those status conferences, and (d) the suggestion of death after Ms. Samuel passed and her representative(s) failed to notify the court.

Thus, in defending the Trustee against the Complaint based on the sale of properties, the Plan’s 6.8.7 provision applies. The Plan expressly requires that Trustee be indemnified and payment of attorney’s fees related to the claims or actions brought against Trustee related to services in connection with the sales.

Trustee having demonstrated that the expenses were necessary and subject to the confirmed Plan provision 6.8.7, the court finds that counsel representing and defending the Trustee against the Complaint filed by Debtor Hoda Samuel in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343 ("Samuel Litigation") was necessary for the bankruptcy estate and provided benefit to the Estate. The Motion is granted, and the Chapter 11 Plan Administrator is authorized to pay the administrative expenses in the amount of \$34,420.10 in fees and \$511.60 in costs.

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

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

The Motion for Allowance of Administrative Expense filed by the Chapter 11 Trustee, Scott M. Sackett (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 11 Plan Administrator is authorized to pay \$34,420.10 in fees and \$511.60 in costs, as an administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the bankruptcy attorneys for the Chapter 11 Trustee ("Counsel"), requests payment of administrative expenses in the amount of \$18,884.50 in fees and \$400 in costs, incurred during the period of May 19, 2016, to March 31, 2021, where Counsel represented and defended themselves against the Complaint filed by Debtor Hoda Samuel in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343 ("Samuel Litigation").

According to Counsel, the District Court dismissed the Samuel Complaint on March 20, 2020, which was affirmed by the Ninth Circuit on January 4, 2021. Debtor's time for seeking certiorari by the United States Supreme Court has expired.

DISCUSSION

Movant argues that the administrative expenses should be allowed on the basis that (i) payment of such fees and costs is required by the Plan which states that the Estate shall defend, indemnify and hold harmless the Trustee and the Trustee's attorneys for claims and expenses (including attorneys' fees) arising as a result of claims asserted based upon acts related to serving as Trustee in this bankruptcy case, (ii) they are allowed by Bankruptcy Code Sections 330 and 503, and (iii) they are allowed as a result of the Debtor's failure to comply with the Barton Doctrine by failing to obtain leave

from the Bankruptcy Court to file the Complaint. Moreover, the Plan and these other authorities protect the Trustee and his Counsel from bearing the fees and costs arising from the Samuel Litigation's attack on the administration of the estate the services provided by the Trustee and his counsel to the estate.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate including the wages, salaries, and commissions for services rendered after the commencement of the case[.]" Here, Movant asserts that the services rendered are attorney's fees and costs incurred by Counsel in responding to the Complaint (and related matters) and should be paid because the confirmed Plan expressly provides for payment of this administrative expense and the services were reasonable and necessary to the administration of this case.

The court begins with a review of the confirmed Plan. The Chapter 11 plan was confirmed and the court's order entered on September 27, 2018. Dckt. 1246. As indicated by Counsel, the relevant provision applicable in this request for administrative expenses is Section 6.8.7, titled Limitation on Liability of the Plan Administrator, which states:

6.8.7 Limitation on Liability of the Plan Administrator: The Trustee and the Plan Administrator and their officers, directors, attorneys, consultants, employees, agents and assignees shall have no liability for any error of judgment or any action taken or omitted made in good faith other than as a result of gross negligence or willful misconduct in connection with, arising under, or related to the Case or the Plan from the Petition Date forward, including but not limited to after the Effective Date. In performing his duties hereunder, the Trustee or the Plan Administrator may consult with counsel selected by him, at the expense of the Estate Funds. No provisions of this Plan shall require the Trustee or the Plan Administrator to expend or risk his own funds or otherwise incur personal financial liability in the performance of any of his duties under this Plan or in the exercise of any of his rights and powers. The Trustee or the Plan Administrator may rely without inquiry upon any writing delivered to him under this Plan which he believes in good faith to be genuine and to have been given by a proper person. **The Estate shall defend, indemnify and hold harmless the Trustee and the Plan Administrator and each of their officers, directors, attorneys, consultants, employees, agents and assignees from any and all claims, damages, liabilities, suits and expenses or any kind or nature (including fees incurred in defending any such claim) which may be imposed or asserted in connection with or arising out of any action, omission, event or transaction arising in connection with the Trustee or the Plan Administrator serving in this Case, except for any action or suit caused by or resulting from gross negligence or willful misconduct of that person or professional.**

Confirmed Plan, Dckt. 1246, 25:24 – 26:3 (emphasis added).

This provision specifically states that the Estate is to defend, indemnify and hold harmless the Trustee and his attorneys for claims and expenses arising out of any action in connection with the Trustee's services in this case. Here, the attorney's fees and costs requested as administrative expenses were incurred as part of Counsel defending themselves against Debtor's Complaint.

Counsel presents evidence that the Debtor's Complaint was based on services rendered by the

Trustee, where the Complaint alleges that Trustee sold four commercial properties at less than the value Debtor believed they were worth, specifically starting “cheap price pennies on the dollars,” to pay the allowed USA restitution judgment. Each commercial property was sold pursuant to motion to sell filed with the court and authorized by the court. Debtor identified Counsel as defendant based upon Counsel having earned fees as it relates to the services provided to the Trustee in selling the four properties. Counsel further asserts that the Complaint was an improper attack on the Trustee’s performance of his duties as Trustee.

Counsel incurred the requested legal fees and costs by performing the following: reviewing, evaluating, and addressing the (i) four complaints filed by Hoda Samuel in the Samuel Litigation (the original complaint and three amended complaints), (ii) numerous motions for extension of time by Ms. Samuel, and (iii) Ms. Samuel’s appeal of the District Court’s dismissal judgment to the Ninth Circuit. The fees and costs were also incurred for preparing and filing (a) the Counsel’s motion to dismiss the Complaint, (b) this administrative Expense motion as FWP-41, (c) multiple status conference reports related to these Administrative Expenses Motions and attendance at those status conferences, and (d) the suggestion of death after Ms. Samuel passed and her representative(s) failed to notify the court.

Thus, in defending themselves against the Complaint based on the sale of properties, the Plan’s 6.8.7 provision applies. The Plan expressly requires that Trustee’s attorneys be indemnified and that payment of attorney’s fees related to the claims or actions brought against Counsel be rendered.

Counsel having demonstrated that the expenses were necessary and subject to the confirmed Plan provision 6.8.7, the court finds that Counsel representing and defending themselves against the Complaint filed by Debtor Hoda Samuel in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343 ("Samuel Litigation") was necessary and provided benefit to the Estate. The Motion is granted, and the Chapter 11 Plan Administrator is authorized to pay the administrative expenses in the amount of \$18,884.50 in fees and \$400 in costs.

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

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

The Motion for Allowance of Administrative Expense filed by Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the bankruptcy attorneys for the Chapter 11 Trustee (“Counsel”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 11 Plan Administrator is authorized to pay \$18,884.50 in fees and \$400 in costs, as an administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

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 (*pro se*), Chapter 11 Trustee, and Office of the United States Trustee on April 21, 2021. By the court's calculation, 22 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 11 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 Final Allowance of Professional Fees is granted.

Gonzales & Associates, Inc., the Accountant ("Applicant") for Scott M. Sackett, the Chapter 11 Trustee ("Client"), makes a Final Request for the Allowance of Fees and Expenses approved on an Interim basis pursuant to a prior order of the court in this case.

Fees are requested for the period July 22, 2016, through October 16, 2018. The order of the court approving employment of Applicant was entered on August 1, 2016. Dckt. 200. Applicant requests final approval of fees in the amount of \$18,663.50 and costs in the amount of \$13.65, which Trustee has already paid out of available funds of the estate.

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 accounting services. 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.

Accounting Services: Applicant spent 72.6 hours in this category. Applicant prepared and filed extensions for the filing of the federal and state tax returns for each of the Debtors’ taxable estates; participated in numerous meetings, telephone conferences and email exchanges with the Debtors’ tax preparer to obtain prior years’ tax information and documents; participated in telephone conferences with the Trustee and the Trustee’s counsel regarding tax issues as they arose; and prepared and filed the Debtors’ estates 2016 and 2017 federal and state tax returns.

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
Gene A. Gonzales, Partner	5.0	\$330.00	\$1,650.00
	5.3	\$340.00	\$1,802.00
	14.2	\$350.00	\$4,970.00
Lori A. Cima, CPA Manager	3.7	\$200.00	\$740.00
	8.9	\$210.00	\$1,869.00

	35.5	\$215.00	\$7,632.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$18,663.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$13.65 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$13.65
		\$0.00
Total Costs Requested in Application		\$13.65

FEES AND COSTS & EXPENSES ALLOWED

The court grants final approval and allowance pursuant to 11 U.S.C. § 330 to Applicant of the following professional fees and expenses, which were previously authorized by an interim order of the court:

Fees	\$18,663.50
Costs and Expenses	\$13.65

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 Final Allowance of Fees and Expenses filed by Gonzales & Associates, Inc. ("Applicant"), Accountant for Scott M. Sackett, the Chapter 11 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 Gonzales & Associates, Inc. is allowed the following fees and expenses as a professional of the Estate:

Gonzales & Associates, Inc., Professional employed by the Chapter 11 Trustee

Fees in the amount of \$18,663.50

Expenses in the amount of \$13.65,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant for the Chapter 11 Trustee in this case. The fees, have been allowed and authorized to be paid pursuant to prior interim application and consistent with the order of distribution under the confirmed Plan.

FINAL RULINGS

7. [20-24833-E-7](#) **MARIA ESTRADA** **MOTION TO AVOID LIEN OF CACH**
[MOT-2](#) **Mark O'Toole** **LLC**
4-1-21 [26]

Final Ruling: No appearance at the May 13, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 1, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH LLC ("Creditor") against property of the debtor, Maria Carolina Estrada ("Debtor") commonly known as 5369 Walmer Road, Oroville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,767.25. Exhibit A, Dckt. 30. An abstract of judgment was recorded with Butte County on September 16, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$179,030.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$124,557.06 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of \$54,472.94

on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Maria Carolina Estrada ("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 CACH LLC, California Superior Court for Butte County Case No. 159655, recorded on September 16, 2014, Document No. 2014-0029673, with the Butte County Recorder, against the real property commonly known as 5369 Walmer Road, Oroville, 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.

DEBTOR DISMISSED: 4/19/2021
JOINT DEBTOR DISMISSED:
4/19/2021

Final Ruling: No appearance at the May 13, 2021 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion for Exemption from Financial Management Course having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.