UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

MODESTO DIVISION CALENDAR

Pursuant to District Court General Order 617, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

May 14, 2020 at 10:30 a.m.

1.	**19-90159-E-11** **RAC-7** **1 thru 5**	**BARRENO ENTERPRISES, LLC** **David Johnston**	**MOTION FOR ADMINISTRATIVE EXPENSES** **4-28-20 [155]**

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 11 Trustee, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on April 28, 2020. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is granted.

David M. Sousa ("Movant") requests payment of administrative expenses in the amount of $1,463.21, incurred during the period of August 30, 2019 to January 22, 2020, for the priority claim of ADP, LLC for processing of the payroll of the employees and workers' compensation insurance to Barreno Enterprises, LLC ("Debtor").

DISCUSSION

Movant argues that this was a necessary administrative expense as the business while it was operating required employees.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant asserts that the priority claim of ADP, LLC was necessary as they provided the payroll services to pay employees, and to provide workers' compensation for those employees prior to the sale of the business closing. The employees provided a critical service to the estate, and therefore the costs to pay those employees were necessary.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing processing of the payroll of the employees and workers' compensation insurance for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 11 Trustee is authorized to pay Movant its administrative expenses in the amount of $1,463.21.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by David M. Sousa ("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 is granted, and ADP, LLC is allowed an administrative expense of $1,463.21 in this case. The Chapter 11 Trustee is authorized to pay that allowed administrative expense pro rata with the other allowed administrative expenses in this case.

2. **19-90159-E-11** **BARRENO ENTERPRISES, LLC** **MOTION TO PAY**
RAC-8 **David Johnston** **4-28-20 [159]**

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 11 Trustee, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on April 28, 2020. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Pay 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 to Pay is granted.

The Chapter 11 Trustee, David M. Sousa ("Movant") requests payment of administrative expenses in the amount of $880.28, incurred during the period of December 28, 2019, to March 31, 2020, in online sales of Michael Barreno ("Buyer") which were inadvertently forward by the franchisor to the bankruptcy estate. Movant provides the Declaration of Davis Sousa to provide information in support of the Motion. Dckt. 161.

DISCUSSION

Movant asserts prior to its sale, Debtor's assets included a Dickey's Barbeque Pit. The asset was sold to Michael Barreno ("Buyer") on December 27, 2019. *Id*. ¶ 5. The restaurant's operation included online orders that were placed by the franchisor of Dickey's Barbecue Pit, and which sale proceeds are later deposited in the estate's bank accounts by the franchisor. *Id*. After the sale was closed, the estate no longer operated that restaurant. *Id*. It is now operated by Buyer. However, between December 28, 2019 and March 31, 2020, $880.28 in online sales were forwarded by the franchisor to the estate. *Id*. These proceeds do not belong to the estate and should have been sent to the Buyer. *Id*. ¶ 6.

Movant having demonstrated that the estate has no interest in those monies and that indeed they are not assets of the estate, the court finds that the proceeds from online food sales belong to Buyer. The Motion is granted and Movant is allowed an administrative expense of $880.28.

The Chapter 11 Trustee is authorized to pay Buyer the online order sales proceeds in the amount of $880.28.

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, David M. Sousa ("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 is granted, Michael Barreno is allowed an administrative expense in the amount of $880.28, and the Chapter 11 Trustee is authorized to pay that allowed administrative expense pro rata with the other allowed administrative expenses in this case.

3. 19-90159-E-11 RAC-6 — BARRENO ENTERPRISES, LLC — David Johnston — MOTION TO DISMISS CASE 4-16-20 [149]

Tentative Ruling: The Motion to Dismiss this Chapter 11 Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case 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 Motion to Dismiss Case is granted.

The Chapter 11 Trustee, David Sousa ("Trustee") filed this Motion seeking conditional dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 105(a), 305(a)(1) and 1112(b)(1). The Motion states the following with particularity (FED. R. BANKR. P. 9013):

A. The case was filed on February 25, 2019.

B. Trustee was appointed on August 31, 2019.

C. The assets of the estate are cash of $27,823, and a litigation claim scheduled by Debtor in its bankruptcy schedules in the amount of $140,000.00.

D. There are two pending motions for compensation: a First and Final Application for Chapter 11 Trustee where he is seeking $12,511.79 in fees and costs; and a Second and Final Application for Trustee's Counsel seeking $32,585.00 in fees and costs.

E. All of the quarterly fees of the U.S. Trustee have been paid current. The only outstanding post-petition administrative expense claims are $1,463.21 owed to ADP for post-petition payroll processing; $880.28 owed to the purchaser of the estate's assets for a post-closing online sales; and the amounts owed to the Trustee and his counsel.

F. Pursuing the litigation claim is unlikely to be successful and its cost would likely exceed the amount at issue, and thus it is of no value to the estate.

G. Debtor scheduled two creditors with secured claims: Danjon Capital, Inc. and North Star Leasing Company. All of the collateral of both creditors was sold as part of the post-petition sale of the Dickey's BBQ restaurant Debtor operated. Both creditors approved the sale and were paid the portion of the sale proceeds that related to their collateral. Any remaining claim would be unsecured claims against the estate.

H. The "secured" claim filed by Merced County Tax Collector is not a secured claim against the estate on the basis that the claim is secured by land leased by the insiders of Debtor. Debtor has no other connection to the real property.

I. No creditors have secured claims against property of the estate.

J. There are four administrative expenses claims: Trustee's Counsel for $32,585.00; Trustee's fees and expenses totaling $12,511.79; ADP's administrative expense for $1,463.21; and Michael Barreno's priority claim for monies owed from post-sale online orders.

K. There are four non-administrative priority claims: Franchise Tax Board for $2,491.38; Internal Revenue Service for $6,579.38; California Tax Department for $80,261.82; and Merced County Treasury for $2,200.00.

L. There is cause to dismiss the case because there are no secured claims in the case; the total outstanding administrative expenses remaining in the case exceed the available cash; and there are no other assets to liquidate.

M. The interests of the creditors, the estate and Debtor are better served by dismissing the case subject to certain conditions. The proposed conditions for dismissal are: (1) approval of the pending Fee Applications; (2) the distribution of the remaining cash on hand to holders of administrative

expense claims; (3) the dismissal of the Bankruptcy Case; (4) the affirmation of all orders issued in this Bankruptcy Case by the Court; and (5) the retention of limited jurisdiction by the Court to resolve any disputes related to the Court's orders entered in this Bankruptcy Case.

N. Dismissing the case will allow for a more efficient and less expensive means for closing the Chapter 11 case, paying creditors and avoiding delay and additional administrative expenses.

O. Cause exists to dismissed the case under Sections 305(a) and 1112(b).

P. Trustee has sold all of the assets which resulted in a greater amount of funds than the liquidation value of the assets; there is no business to reorganize through a plan; the scheduled litigation is unlikely to be successful and the amount at issue would be less than the costs of litigation; the total amount of administrative claim, $47,440.28, exceeds the remaining $27,823.00 cash asset.

Q. Confirming a Chapter 11 Plan would not provide Debtor with a discharge of any of the remaining claims.

R. Conversion to a Chapter 7 case would not be the better alternative since it would return much less, if anything, to the creditors of the estate.

S. The estate is administratively insolvent, and as such conversion would result in further insolvency with added Trustee and Counsel costs. It would also cause further delays since it might require further 341 meetings, investigation, final accounting, and further steps to close the case.

T. The sole remaining task is to distribute the remaining cash to administrative creditors. There is nothing left for a Chapter 7 trustee to administer.

U. Debtor's Counsel was notified that Trustee was filing the instant Motion and no opposition was provided.

V. There is cause for the court to depart from vacating orders under Section 349(b) because without the court affirming its orders entered in this case, Trustee could not effectuate the proposed conditional dismissal. The court approved a sale free and clear of liens with a distribution to secured creditors; approved one fee application; and ordered thousands of dollars to be disgorged from Debtor's bankruptcy counsel. Thus, it is in the best interest of creditors, Debtor, and the estate that an order mooting 349(b) be entered for cause under Sections 105(a) and 349(b).

W. The Bankruptcy Court will retain limited jurisdiction over the conditional dismissal order and any other disputes concerning order entered during the case.

X. There is not sufficient cash to pay all administrative claims in full. The suggested distribution of the $27,823.00 would be as follows: ADP's administrative expense of $1,463.21, Michael Barreno's online sales proceeds of $880.28, and, if any, U.S. Trustee fees to be paid in full from the cash on hand. The balance to be distributed on a pro-rata basis to Trustee and Trustee's Counsel as stated in their respective motions for compensation.

Y. Trustee requests the Court dismiss the case under the listed conditions; affirms its orders entered in this case; retain limited jurisdiction; and approve the distribution of the remaining cash on hand to administrative creditors of the estate as provided.

Motion, Dckt. 149.

Trustee filed the Declaration of David M. Sousa, Movant/Chapter 11 Trustee, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 152.

DISCUSSION

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Here, Trustee asserts that after the sale of the business assets, there is not much left to do for the Trustee but to pay the administrative claims. Trustee does not believe that the litigation listed by Debtor in the Schedules would be successful, but that litigation would be burdensome as it would incur further costs and further delay. Debtor's assets are now nominal and the cash in had in the amount of $27, 823.00 is not enough to cover the administrative expenses. The estate is able to only pay Trustee and Counsel for their allowed fees on a pro-rata basis. Continuing further would only subject the estate to a greater administrative insolvency.

Trustee argues that conversion is not in the best interest of creditors because conversion would create further expenses and delay.

Trustee's arguments are well taken. The requested dismissal allows Trustee to resolve the remaining administrative claims and close the case without further delays. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

Counsel for the Trustee shall prepare and lodge with the court a proposed order dismissing this bankruptcy case after the trustee has made the pro rata disbursements to pay the allowed administrative expenses in this case.

4.	**19-90159-E-11** **RAC-4**	**BARRENO ENTERPRISES, LLC** **David Johnston**	**MOTION FOR COMPENSATION FOR DAVID M. SOUSA, CHAPTER 11 TRUSTEE(S)** **4-16-20 [138]**

Final Ruling: No appearance at the May 14, 2020 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 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. 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).

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

The Motion for Allowance of Professional Fees is granted.

David M. Sousa, the Chapter 11 Trustee, ("Applicant") for the Estate of Barreno Enterprises, LLC ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 31, 2019, through March 31, 2020.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc.*

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, business operations, and asset analysis and disposition. The court finds the services were beneficial to Client and the 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.

Tax Issues: Applicant spent 0.6 hours in this category. Applicant prepared sales tax returns.

Case Administration: Applicant spent 16.55 hours in this category. Applicant corrected previously filed monthly operating reports; drafted and filed monthly operating reports for August, September, October, November, and December. Not included in this time is the time Applicant spent on the January, February and soon to-be-filed March operations reports.

Fee/Employment Applications: Applicant spent 2.6 hours in this category. Applicant performed a review of this case and prepared a declaration for the Appointment Motion.

Business Operations: Applicant spent 63.07 hours in this category. Applicant traveled to the Merced Location and met with the employees and manager on a regular basis; operated the store, reviewed operations and cash flow, communicated with vendors, and made payments; and resolved budgeting and late payment issues.

Financing: Applicant spent 1.5 hours in this category. Applicant reviewed correspondence with the Corporation Service Company regarding the UCC-1 filing; reviewed correspondence with creditors with security interests in sold assets and wrote them checks pursuant to the Sale Motion.

Asset Disposition: Applicant spent 11.4 hours in this category. Applicant communicated and negotiated with Michael Barreno, regarding the sale referenced in the Sale Motion; traveled to and attended the hearing on the Sale Motion; and reviewed and signed documents necessary for the closing of the sale referenced in the Sale Motion.

Garcia Litigation: Applicant spent 0.8 hours in this category. Applicant reviewed the lawsuit and correspondence involving the "slip and fall" action against the estate.

Fee/Employment Objections: Applicant spent 0.2 hours in this category. Applicant reviewed the Disgorge Motion.

Asset Analysis: Applicant spent 3.8 hours in this category. Applicant communicated and coordinated with Dickey's franchisor to obtain roughly $30,000.00 from Dickey's online sales orders for the estate.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$5,043.60
3% of the balance of $0.00	$0.00
Calculated Total Compensation	$10,793.60
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$10,793.60
Less Previously Paid	$0.00
Total First and Final Fees Requested	$10,793.60

Applicant also requests reimbursement of $1,718.19 in travel expenses from August 31, 2019 to March 31, 2020. Travel was necessary to Merced, Turlock, Stockton, and Modesto during the administration of this case. Using guidelines provided in IRS Notice 2019-02, Applicant requests $0.58 per mile traveled. Applicant traveled 2,962.4 miles for a total of $1,718.19 in mileage expenses incurred during the Application Period.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $10,793.60 are approved pursuant to 11 U.S.C. § 330 are 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 in a Chapter 11 case.

EXPENSES ALLOWED

First and Final Costs in the amount of $1,718.19 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 in a Chapter 11 case.

The Estate has $27,516.00 of unencumbered monies to be administered as of the filing of the application. The Trustee has also sought the dismissal of this case due to there being no other administrable assets. The Estate is administratively insolvent after the reasonable and necessary administrative expenses allowed for not only the trustee and professionals, but several persons doing business with the former Debtor in Possession.

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

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

Fees	$10,793.60
Costs and Expenses	$1,718.19

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by David M. Sousa, the Chapter 11 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that David M. Sousa is allowed the following fees and expenses as a professional of the Estate:
>
> David M. Sousa, the Chapter 11 Trustee
>
> Fees in the amount of $10,793.60
> Expenses in the amount of $1,718.19,
>
> **IT IS FURTHER ORDERED** that the Chapter 11 Trustee is authorized to pay that allowed administrative expense *pro rata* with the other allowed administrative expenses in this case.

5. **19-90159-E-11 RAC-5** | **BARRENO ENTERPRISES, LLC** **David Johnston** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR RONALD A. CLIFFORD, TRUSTEES ATTORNEY(S)** **4-16-20 [143]**

Final Ruling: No appearance at the May 14, 2020 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 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. 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).

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

The Motion for Allowance of Professional Fees is granted.

Blakeley LLP, the Attorney ("Applicant") for David M. Sousa, the Chapter 11 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 28, 2019, through March 31, 2020. The order of the court approving employment of Applicant was entered on September 11, 2019. Dckt. 60. Applicant requests fees in the amount of $8,123.50 and costs in the amount of $1,069.80.

Applicant also requests final allowance of fees of $22,942.00 and expenses of $449.70 incurred by BLLP between the dates of September 4, 2019 and December 27, 2019, and approved by the Court on an interim basis on February 7, 2020. Dckt. 130.

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 provide general case administration and advised Trustee on matters of claims against third parties; draft motions to sell; and review operating reports. The Estate has $27,516.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Credit Inquiries: Applicant spent 0.20 hours in this category. Applicant responded to inquiries from parties related to the matter.

Employment/Compensation: Applicant spent 7.9 hours in this category. Applicant drafted its first interim application for the First Period and appeared at the hearing.

Employment/Compensation of Professionals: Applicant spent 1.4 hours in this category. Applicant communicated with the Trustee regarding his final application for fees and expenses, and drafted the same.

Financial Filings: Applicant spent 0.6 hours in this category. Applicant revised and filed the January Operating Report; and reviewed an email from one C. Elliott regarding the February Operating Report.

Operations: Applicant spent 0.80 hours in this category. Applicant dealt with the Dickey's BBQ Pit franchisor regarding more than $30,000 owed to the estate from on-line orders, and negotiated the funding of those monies to the estate; and reviewed and finalized the December Operating Report.

Asset Dispositions: Applicant spent 0.9 hours in this category. Applicant drafted the bill of sale related to sale of assets, and communicated with the buyer and the Trustee regarding closing issues.

Case Administration: Applicant spent 9.5 hours in this category. Applicant performed numerous tasks in the case, including, drafted the motion to dismiss the case, communicated with the Dickey's BBQ

Pit franchisor regarding the franchise agreement at the Merced Location, drafted the third status report, and communicated with the Trustee.

Bankruptcy Litigation: Applicant spent 2.90 hours in this category. Applicant reviewed purported claims against Billy Phong and Sherwood Mall, and provided an analysis to the Trustee.

Claims Administration and Objections: Applicant spent 0.10 hours in this category. Applicant reviewed proof of claims filed.

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**
Ronald A. Clifford, Partner	18.40	$395.00	$7,268.00
Vincent Trang, Law Clerk	5.9	$145.00	$855.50
	0	$0.00	$0.00
Total Fees for Period of Application			$8,123.50

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	$22,942.00	$0.00
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$22,942.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,069.80 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $449.70.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.20 per page	$869.00
Postage		$200.80
		$0.00
Total Costs Requested in Application		$1,069.80

In looking at the costs, Applicant states that they charge clients $0.20 a page for photocopies. Commonly, a cost of $0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is $0.20 a page in 2020.

The court reduces the photocopy charge to $0.10 a page, thus reducing costs to $635.30. This is without prejudice to Applicant documenting that the actual cost for photocopies is more than $0.10 a page and that such higher amount is reasonable. [FN.1]

FN. 1. The court recalls a case from a few years back where the attorney asserted that the $0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney $0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that $0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.

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. Second and Final Fees in the amount of $8,123.50 and prior Interim Fees in the amount of $22,942.00 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 in a Chapter 11 case.

Costs & Expenses

Second and Final Costs in the amount of $635.30 and prior Interim Costs in the amount of $449.70 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 in a Chapter 11 case.

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

Fees	$8,123.50
Costs and Expenses	$635.30

pursuant to this Application and prior interim fees of $22,942.00 and interim costs of $449.70 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 Blakeley LLP ("Applicant"), Attorney for David M. Sousa, 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 Blakeley LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Blakeley LLP, Professional employed by the Chapter 11 Trustee
>
> Fees in the amount of $31,065.50
> Expenses in the amount of $1,085.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 11 Trustee. The Chapter 11 Trustee is authorized to pay that allowed administrative expense *pro rata* with the other allowed administrative expenses in this case.

6. 19-90110-E-7 ADJ-5 | **CAMPBELL WINGS, INC.** **Reno Fernandez** | **MOTION TO SELL** **4-1-20 [91]**

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, parties requesting special notice, and Office of the United States Trustee on April 1, 2020. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Irma C. Edmonds, in her capacity as Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as a liquor license ("Property").

The proposed purchaser of the Property is KK Restaurants, LLC, and the terms of the sale are:

A. The purchase price is $32,500.00.

B. Buyer to provide a deposit of $1,000.00.

C. The balance of $31,500.00 to be deposited to an escrow holder within thirty (30) days of the filing of an application to transfer ownership of the liquor license.

D. Buyer shall pay any and all escrow and transfer fees. Escrow shall close upon issuance of the license to Buyer by the Department of Alcoholic Beverage Control.

E. Sale is subject to the court's approval and the applicable judicial district of the bankruptcy court has the sole and exclusive jurisdiction to decide all matters related to the license.

Overbidding Procedures

Trustee proposes the following overbidding procedures for the sale, requiring that at least seven (7) days prior to the hearing date on this motion, a prospective bidder must contact the Trustee and:

1. Provide the Trustee a cashier's check, drawn on a California bank in an amount equal to or greater than $1,000.00 for a deposit (buyer's non-refundable deposit equals $1,000.00).

2. Sign a contract which is identical to the Purchase Agreement between the Trustee and Buyer, except for the final purchase price which will be determined through bidding at the hearing on this motion.

3. Trustee recommends minimum overbids of $1,000.00, the first overbid being in the minimum amount of $33,500.00.

4. If any party is outbid, then that party shall have any deposit returned.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because there are an estimated net proceeds of $32,500.00 for the benefit of creditors.

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

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

The Motion to Sell Property filed by Irma C. Edmonds, 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 Irma C. Edmonds, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to KK Restaurants, LLC or nominee ("Buyer"), the personal property identified as a liquor license ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $32,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 94, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

7. 19-24886-A-7 BLF-4 **STACIE FENDERSON** **Brian Coggins** **CONTINUED FINAL HEARING RE: MOTION TO SELL 3-19-20 [42]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as three horses named Fianna, Fury, and Galaxy ("Property").

The proposed purchaser of the Property is James Ross ("Buyer"), and the terms of the sale are:

A. Buyer shall pay the purchase amount of $9,000 by delivering a cashier's check made payable to "Kimberly J. Husted, Chapter 7 Trustee, *In re Fenderson*"

B. Buyer is aware of the health conditions of the three horses, sale is under "as is" condition.

C. Agreement is subject to court's approval.

D. No broker has been employed for this sale who may be entitled to any commission, fee, or other compensation.

E. Buyer to pay for any costs and feed incurred in connection with the transactions described in this Agreement.

F. Parties exchange general releases of liability.

G. Trustee makes no representations as to taxes and other assessments.

H. Buyer will not close transaction until he has the opportunity to inspect, and has in fact, inspected the Property.

I. Each party shall bear its own attorney's fees and costs in connection with the Agreement.

J. In case of a successful overbid by a third party, Buyer is entitled to a breakup fee from the bankruptcy estate as reimbursement of the expenses incurred by Buyer in an amount of the greater of $1,500.00 or 10% of the purchase price in excess of the Purchase Amount.

Overbidding Procedures

Trustee does not oppose overbidding at the hearing on terms that are agreeable to the court.

Opposition of Debtor

At the hearing, Debtor opposed the sale, asserting that upon the filing of the bankruptcy, Debtor has invested $30,000 in veterinary and training expenses - post-petition. On the Schedules, Debtor listed the value of each horse as $500.00, due to illnesses. But post-petition, without authorization from the Trustee, Debtor states that she has continued to invest in the horses, obtaining $30,000 from her parents.

The opposition stated at the hearing is made subject to the certifications of Federal Rule of Bankruptcy Procedure 9011. The court sets the Motion for final hearing to afford Debtor the opportunity to file the opposition and supporting evidence, including properly authenticated documentation of the payment of $30,000 for veterinary and training expenses.

DISCUSSION

On April 23, 2020, Debtor filed an Opposition, the Declaration of Stacie D. Fenderson, and three (3) exhibits. Dckts. 49, 50, 51. Debtor opposes the sale on the basis that the proposed amount for the sale is too low and the proposed Buyer does not have the background necessary to care for the horses.

Debtor explains that she was interested in buying the houses from Trustee but was first unable to respond to the offer on time, and that later, at the time of the sale, she was unable to overbid because she was laid off due to the COVID-19 crisis. Debtor then enumerates some of the issues with the horses that require a prospective buyer to have the proper experience so that they can care for the horses. Debtor also argues that Trustee did not put effort into properly valuing and marketing the horses. Adding that because the Trustee does not explain how she reached the $9,000 valuation, Debtor cannot respond to this specific term of the sale.

Debtor's Opposition lays outs a series of interesting events and contentions that Debtor seeks to raise to stop the proposed sale. These include the Debtor describing her negotiations to purchase the three horses. The court summarizes these assertions as follows:

A. Debtor filed bankruptcy on August 1, 2019, and valued the three horses at an aggregate value of $1,500 due to their poor health. Opposition, p. 2: 9-15.

B. Debtor, while represented by counsel throughout this case, voluntarily and without any authorization from the Trustee, proceeded to incur over $30,000.00 in expenses in connection with the horses she did not own, but were property of the bankruptcy estate. *Id.*, p. 2:15-19.

C. In December 2019, Debtor negotiated with the Trustee to buy the horses from the bankruptcy estate. The Trustee offered to sell them to the Debtor for $10,000. Debtor assumed that the Trustee was giving Debtor credit for the unauthorized expenses, so that, in Debtor's mind, substantially increased the value. *Id.* p. 2: 20-28.

D. Debtor did not accept the offer because she did not have the $10,000 to pay for the horses or the money to care for them after she would have purchased them. *Id.*, p.3:4-6. FN. 1

FN. 1. As addressed in the Supplemental Declaration of Loris Bakken, the $10,000 was to purchase from the estate all of the estate's interests in all of the horses and all of the cats of the Debtor that had become property of the bankruptcy estate. Dec. ¶¶ 9, 16; Dckt. 56.

E. When Debtor could not perform, the Trustee entered into the sale now before the court for $9,000.00, only $1,000 less than the Debtor through was a fair purchase price if she were buying all of the horses and the cats. *Id.*, p. 6-7.

Debtor then objects to the qualifications of the Buyer to own horses. Debtor believes that these horses require special care, something that Buyer is not qualified to go. Debtor requests that the Trustee turn over the sale to Debtor so that she can find the right purchaser for the horses.

Debtor's Declaration

The court continued the April 9, 2020 hearing to give Debtor the opportunity to provide evidence in support of the $30,000.00 allegedly spent on veterinary and training expenses for the horses. In her Declaration, Debtor lists expenses from August 2, 2019 through May 15, 2020. Declaration, pp. 2-3. The first list of expenses include boarding, supplements, vaccinations, veterinary procedures, and medication. *Id*., p. 2 at ¶ 7. Debtor also provides a second list of other expenses that were debited from her bank account from September 2019 through March 2020. *Id*., p. 3 at ¶ 7. This particular list does not state what the expenses were but states the name of the company where it was purchased, the amount, and the date. *Id*. A third list of expenses incurred includes the name of the company or person and an amount. *Id*. at ¶ 8.

Debtor testifies that based on the expenses she incurred to improve the horses health conditions, Debtor believes their valuation significantly exceeds the $9,000.00 purchase offer. *Id*. at ¶ 9. Debtor further testifies that a buyer should have extensive experience with these types of horses due to their medical diagnosis, specific dietary needs, and continued training and rehabilitation. *Id*. at ¶ 10.

Debtor provides Exhibit A- Statement of Expense for Olympus Meadows and Silver Starr Farms, Inc. Dckt. 51. While these statements are detailed and allowed the court to understand what specific expenses were incurred, Debtor's Exhibit B- Wells Fargo Bank Statements, provide no context as to these expenses. The statements list the name of a business, a date and an amount. Debtor does not inform the court whether these are veterinary or training expenses. *Id*. Exhibit C are order confirmation statements for what seems to be purchases for horse medications from different companies, a photo of an invoice, several checks and receipts. As previously explained to Debtor, Debtor was to provide properly authenticated documentation of the $30,000.00 for expenses. Exhibits B and C fail to meet this standard.

Filing of Bankruptcy

Debtor, with the assistance of counsel, knowingly and intentionally filed this Chapter 7 bankruptcy case. Debtor necessarily knew that once she chose to file Chapter 7, her various assets, including the horses, became property of the bankruptcy estate and under the exclusive control of the Chapter 7 Trustee - whose "job" it is to liquidate the property of the bankruptcy estate. 11 U.S.C. § 707(a)(1).

On Schedule A/B, each of the three horses are stated, under penalty of perjury, to have a value of $500 each as of the August 2, 2020 commencement of her voluntary Chapter 7 case. Dckt. 1 at 14. Debtor lists other horses as assets with significantly higher values. Debtor claimed a $500 exemption in each on Schedule C and Amended Schedule C, which was the full value that she stated for each of the horses on Schedule A/B. *Id.* at 19, Dckt. 35 at 12-13.

On Schedule J, Debtor states under penalty of perjury that her family unit expenses exceed their income by ($824) a month. Dckt. 1 at 29-30. This include $300 for "Vet Expense" and $400 for "Horses/Hay." Over a twelve month period, this is "only" $8,400 for these expenses, which does not appear to include any extraordinary care expenses in the additional $30,000 amount Debtor states she has spent on the three horses being sold.

It appears that Debtor assumed that her $500 valuation for the horses would slide through the bankruptcy case, and she chose to maintain the appearance and pleasure of owning these three horses - at least until Debtor could not come up with the $10,000 to pay (though apparently able to pay $30,000 for expenses for horses that she did not own) for the pleasure and appearances of the horses that she did not own.

Trustee's Reply

On April 30, 2020 Trustee filed a Reply to Debtor's Opposition, and in support, the Declarations of: Bashar Ahmad, Kimberly Husted, Loris L. Bakken, and Mark Gorton. Dckts. 53, 54, 55, 56, 57. Trustee also filed 34 exhibits, all copies of email communications between Trustee, Debtor's Counsel, and Trustee's Counsel.

In her Reply, Trustee provides a detailed account of the efforts made to obtain information from Debtor regarding the horses subject of this motion. The Reply gives a time line of communications from the beginning of the case (roughly the end of August 2019) through the week before the hearing on the motion to sell which was April 9, 2020. Trustee requested over twenty times that Debtor provide information as to the condition, location, costs, and other pertinent information of the horses. At the meeting of creditors, Debtor evaded the questions; when documents were requested, they were never produced; and when Debtor and Debtor's Counsel would produce such information, it would be insufficient. According to the emails provided by Trustee, the horses location is not provided until January 15, 2020. That is almost five (5) months after Trustee first made such request.

Even with such limited information and even more limited access to the horses, Trustee was able to find a buyer. Trustee also asserts that she reached out to four different businesses but no other offers were made.

As to the valuation, Debtor objects to it because it is too low. Debtor scheduled the horses at $500 each. At the meeting of creditors Debtor confirmed this valuation. Debtor's Declaration fails to provide any evidence as to her own valuation, except to base it on the fact that she has spent $30,000 in their care over the last nine (9) months. Debtor fails to show that the sale is not in the best interest of the estate.

The Trustee provides a number of exhibits with the Reply. Dckt. 58. Exhibit N, p.1, is an email dated December 3, 2019, from Debtor's counsel to the Trustee, in which Debtor's counsel affirmatively states that the horses are not being hidden and "with any luck you will be able to sell asap." It appears that Debtor and Debtor's counsel realized and understood that the horses would be sold quickly and would be sold by the Trustee.

May 14, 2020 Hearing

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because liquidating the estate's interest in the Property will provide $9,000.00 to the estate, with net proceeds to the estate of $7,500.00 after paying Debtor's exemption of $1,500.00 from the sale proceeds.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly Husted, 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 Kimberly Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to James Ross or nominee ("Buyer"), the Property commonly known as three horses named Fianna, Fury, and Galaxy ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $9,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 45, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> ~~**IT IS FURTHER ORDERED** that shall, on or before xxxxxxxxxx , 2020, Debtor shall turn over to Buyer all of the necessary bloodline documents, specifically identified as:~~
>
> ~~1. xxxxxxxxxx~~
>
> ~~2. xxxxxxxxxx~~
>
> ~~3. xxxxxxxxxx~~
>
> ~~for each of the three horses subject of this sale that Debtor has in her possession.~~
>
> ~~If Debtor fails to turnover the above identified bloodline document by the specified date, the court shall impose by a separate, subsequent order, a correction sanction of $5,000.00, which shall include all attorneys' fees and costs of collection of such sanction, if not paid as to be paid to the Clerk of the Bankruptcy Court for deposit in the U.S. Treasury, and Buyer shall be entitled to recovery of all attorneys' fees, costs, and expenses in specifically enforcing this order requiring the turnover of the bloodline documents. In addition to the $5,000.00 corrective sanction, the court will consider whether to issue an order to show cause for further monetary sanctions, corrective non-monetary sanctions, or referral of the failure to comply with~~

~~the order of this court to the District Court for enforcement through the corrective and punitive sanction powers of the District Court~~.

8. **17-90516-E-7** **VERA JOHNSON** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)**
HCS-8 **Thomas Hogan** **4-8-20 [127]**

THIS MATTER HAS BEEN POSTED AS AT TENTATIVE DUE TO ADDITIONAL INFORMATION REQUIRED FROM APPLICANT THAT MAY BE PRESENTED AT THE HEARING

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other

parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Herum, Crabtree, Suntag, the Attorney ("Applicant") for Gary R. Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 31, 2017, through May 14, 2020. The order of the court approving employment of Applicant was entered on November 7, 2017. Dckt. 21. Applicant requests fees in the amount of $64,078.50 and costs in the amount of $522.34.

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 assisting and providing Trustee with general case administration, investigating the marital dissolution case; investigating real property for a potential sale; preparing applications to employ special family law counsel, realtor and accountant; and drafting motion to sell the property. The Estate has $228,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 14.30 hours in this category. Applicant prepared Applicant's employment application and the instant application for compensation, and prepared the Trustee's application for compensation.

Investigation of Divorce Case; Employment of Special Counsel: Applicant spent 76.80 hours in this category. Applicant investigated the pending dissolution case; employed special family law counsel; communicated with Debtor's counsel in the divorce case; investigated documents related to the case

including business interests tax returns and buy-sell agreements; advised Trustee on prosecuting the estate's rights in the divorce case; prepared and filed Trustee's notice in the divorce case; worked with Special Counsel on various issues affecting the divorce case and the instant case; prepared amended application to employ special counsel when counsel for Debtor's former spouse joined Special Counsel's firm; and prepared special counsel's fee application.

Recovery and Sale of Real Property; Relief from Automatic Stay: Applicant spent 182.10 hours in this category. Applicant investigated real property; prepared application to employ realtor and accountant; researched and communicated with special counsel on the issues related to the real property as part of community property; prepared demand letter to lienholders so that title could be reconveyed to Trustee; advised Trustee on Debtor's former spouse's motion for relief from the automatic stay; negotiated and prepared agreement and stipulation between Trustee and former spouse confirming real property as community property and consenting to Trustee's sale of the property; investigated Debtor's lack of cooperation with realtor; drafted motion to compel Debtor to vacate and turnover the property; prepared and negotiated the stipulation to document agreement from former spouse to assist Debtor in finding a new residence so that Debtor would turnover the property; and prepared the motion to sell the property, distribute proceeds which resulted in the and Trustee receiving $218,576.58 for the estate.

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**
Dana A. Suntag	55.10	$345.00	?
(The Billing Summary Does Not Provide the Breakdown of Hours for the Lower Rate in two months of 2017)		$375.00	
Benjamin J. Codog	208.80	$175.00	?
(The Billing Summary Does Not Provide the Breakdown of Hours for the Lower Rate in two months of 2017)		$200.00	
Jaismin Kaur	3.10	$170.00	$527.00
Amy N. Seilliere	1.50	$170.00	$255.00
Total Fees for Period of Application			$782.00

Unfortunately, the Motion and supporting documents do not state the dollar amounts of billings for the two attorneys providing the representation. Because their billing rates changed during the period of employment, the court cannot make a calculation of the hours times the rate to generate the billings for each attorney to generate a confirmation for the total requested.

Fortunately, at the hearing, counsel was able to provide the court this information on the record, stating that the dollar amount billings for Mr. Suntag are **$xxxxxxxxxx** and the dollar amount billings for Mr. Codog are **$xxxxxxxxxx**.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $522.34 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10 per page	$253.86
Courier Service		$25.05
Mileage to and from Eastern Court hearing		$65.78
Postage		$177.65
Total Costs Requested in Application		$522.34

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 $64,078.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $522.34 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$64,078.50
Costs and Expenses	$522.34

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 Herum, Crabtree, Suntag ("Applicant"), Attorney for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Herum, Crabtree, Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum, Crabtree, Suntag, Professional employed by the Chapter 7 Trustee

Fees in the amount of $64,078.50
Expenses in the amount of $522.34,

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

9. 19-90941-E-7 MDM-1

MARCI ALVES
David Foyil

CONTINUED TRUSTEE'S MOTION DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS
3-5-20 [17]

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and creditors on March 7, 2020. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied.

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), seeks dismissal of the case on the grounds that Marci Ann Alves ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:30 a.m. on April 7, 2020.

As reported by the Trustee, the Debtor was not at the April 7, 2020 continued First Meeting. Trustee's April 9, 2020 Docket Entry Statement. Due to the COVID-19 travel and meeting restrictions due to health concerns, the U.S. Trustee had to continue all such first meetings. Trustee has scheduled a continued Meeting of Creditors for May 5, 2020 via telephone conference. *Id.*

Debtor's Response

On April 16, 2020, Debtor filed an Opposition and a Declaration in opposition to the Trustee's Motion. Dckts. 20, 21. In her Declaration, Debtor recounts commencing this bankruptcy case on October 18, 2019 - six months prior to the hearing on this Motion.

Debtor testifies that her attorney "hired" Kathleen Crist-Walker to "appear" at the meeting. Declaration, ¶ 3; Dckt. 21. Debtor testifies that she did not attend the meeting but "Kathleen Crist-Walker" appeared at the First Meeting of Creditors on December 17, 2019.

Debtor further testifies that the continued First Meeting of Creditors was conducted on January 7, 2020, that Debtor was aware of it, but Debtor "did not attend." *Id.*, ¶ 4. She testifies in Paragraph 8 of her Declaration that she missed the first two meetings out of "inattention and disorganization."

For the continued Third First Meeting of Creditors, Debtor testifies that her attorney, David Foyil appeared, but Debtor did not. Her testimony under penalty of perjury as to not being there consists of "I was in route to the Court but failed to make it to the meeting on time." *Id.*, ¶ 5. In Paragraph 8 of the Declaration, Debtor testifies under penalty of perjury that her boyfriend "insisted" on attending, they argued in the car "the whole way," and Debtor took several wrong turns. By the time Debtor made it to the courthouse "everyone had left." In saying "everyone had left," to the extent Debtor actually drove to the Courthouse that day, she had to be grossly late for "everyone" to be gone.

As stated in the Opposition, Debtor testifies in her Declaration as to several medical and health issues that present her with challenges in life.

Debtor, and Debtor's counsel, plead for Debtor to be allowed one final chance to appear at the First Meeting of Creditors.

DISCUSSION

A review of the court's file indicates that Debtor does not have any prior bankruptcy cases in this District. A review of Debtor's Schedules indicate creditors consistent with obligations relating to ongoing medical and heath issues.

In light of these circumstances, the court continues the hearing and will afford Debtor a final opportunity to attend the First Meeting of Creditors, and to attend any further continued ones that are scheduled.

The court also extends the deadlines for commencing adversary proceedings and contested matters by the Trustee, creditors, and other parties in interest arising under 11 U.S.C. § 523, § 707(b), or § 727, to July 31, 2020.

Trustee's Report of No Distribution

On May 7, 2020, Trustee filed a Report of No Distribution. Trustee's May 7, 2020 Docket Entry Statement. Trustee states that Debtor and Debtor's Counsel appeared at the continued Meeting of Creditors on May 5, 2020. *Id*. The meeting was concluded and Trustee reports that there is no property or money available for distribution to creditors over and above that exempted by law, and certifying that the case has been fully administered. *Id*. Trustee also requests to be discharged from further duties. *Id*.

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

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

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

10. 18-90764-E-7 DAWN CHRISTENSEN
19-9005 ADJ-2
EDMONDS V. CHRISTENSEN ET AL

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GARY E. CHRISTENSEN AND FRANCES ANN CHRISTENSEN
4-2-20 [67]

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, Plaintiff/Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2020. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Irma C. Edmonds, the Chapter 7 Trustee, ("Plaintiff") requests that the court approve a compromise and settle competing claims and defenses with Gary E. Christensen and Frances Ann Christensen, individually, and as Trustee of the Christensen Family Trust dated September 28, 1998 ("Defendants"). The claims and disputes to be resolved by the proposed settlement are the bankruptcy

estate's interest in the March 6, 2018 transfer of Debtor's undivided 50% ownership interest to the Defendants in real property commonly known as 9747 Treetop Drive, Stockton, California.

On January 30, 2010, Plaintiff initiated the instant Adversary Proceeding by filing a Complaint to avoid the fraudulent transfers against Defendants. Dckt. 1. Defendants filed an Answer and various counterclaims on July 18, 2019 seeking to rescind both the 2017 granted deed where they conveyed the interest to Debtor and the 2018 grant deed where Debtor conveyed her 50% interest to the Defendants. Dckt. 32. Plaintiff's pending Motion for Summary Judgment is set to be heard the same date as the instant Motion.

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. 71):

A. Plaintiff to accept the sum of $7,500.00 in full satisfaction of any claims against Defendants.

B. Defendants to pay $5,000.00 within five business days of the sate of the approval of the settlement agreement, and one final payment of $2,500.00 within six months thereafter. A default shall occur if any payment due to Plaintiff is not received within 10 days of its due date.

C. Parties have exchanged general mutual releases of any and all claims related to the transfer.

D. Agreement is continued upon approval of the bankruptcy court.

E. Defendants represent and warrant that recital J of this Agreement is a true, correct, and accurate representation.

F. Time is expressly declared to be of the essence in this Agreement.

G. If any civil action is commenced, prevailing parties are entitled to recover costs and fees incurred from the non-prevailing party.

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).

Plaintiff argues that the four factors have been met.

Probability of Success

Although Plaintiff believes that there is a high probability of success on the Motion for Summary Judgment to dispose of Defendant's Counterclaim, the outcome of any trial is not guaranteed, particularly where the relevant counterclaims seek to rescind the initial transfer of property to Debtor and the deed whereby Debtor transfers her interest to the Defendants.

Difficulties in Collection

Plaintiff argues that this factor weighs heavily in support of the settlement. Defendants financial documents well support that Defendants do not have surplus income to pay a substantial judgment and they lack material assets to pay a substantial judgment. Defendants' sole income is social security and a pension that will expire in a few years. Defendant's primary asset is their residence which after the homestead exemption, the current mortgage balance, and costs of sale, the residence would essentially be immune from collection by the Plaintiff. Further, Plaintiff asserts that Defendants would qualify for relief and a discharge under Chapter 7 of the Bankruptcy Code. Thus, if Plaintiff would be to obtain a judgment, she is unlikely to collect anything.

Expense, Inconvenience, and Delay of Continued Litigation

Without the settlement, the bankruptcy estate would be incurring additional legal fees by continuing to litigate the motion for summary judgment and trial. The estate has no funds, and by continuing the litigation, it would also incur costs to pursue collection of a judgment. Plaintiff contends the settlement avoids expense, inconvenience, uncertainty, and delay.

Paramount Interest of Creditors

Plaintiff argues that certainty and security would be preferable for creditors to recover under the settlement agreement than to face the uncertainty of collection of a judgment.

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 of anticipated uncertainty and difficulties in the matter of collection. Defendants have very limited income and assets, which have been confirmed by documents provided to Plaintiff. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Plaintiff") 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 Plaintiff and Gary E. Christensen and Frances Ann Christensen, individually, and as Trustee of the Christensen Family Trust dated September 28, 1998 ("Defendants") 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. 71).

11. 18-90764-E-7 DAWN CHRISTENSEN
19-9005 ADJ-2
EDMONDS V. CHRISTENSEN ET AL

CONTINUED MOTION FOR SUMMARY JUDGMENT
11-8-19 [43]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants, and Defendant's Attorney on November 8, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Summary Judgment is dismissed without prejudice.

Chapter 7 Trustee, Irma C. Edmonds, ("Plaintiff") filed the instant adversary proceeding on January 30, 2019, against Gary E. Christensen and Frances Ann Christensen, individually, and as Trustee of the Christensen Family Trust dated September 28, 1998 ("Defendants").

The Complaint alleges that Debtor fraudulently transferred her undivided 50% interest in real property commonly known as 9747 Treetop Drive, Stockton, California to her parents, Defendants, within two years of Debtor's bankruptcy petition date.

On November 8, 2019, Plaintiff filed the instant Motion for Summary Judgment and its accompanying Memorandum of Points and Authorities pursuant to Fed. R. Bankr. P. 7056. Dckt. 43, 45. Plaintiff asserts that there are no issues of material fact such that Plaintiff is entitled to judgment as a matter of law. Defendants failed to state a claim under Rule 12(b)(6), and the Trustee as a hypothetical bona fide purchaser of the Real Property, under C.C.P. § 1214, trumps each claim for relief set forth by Defendant's Counter-Claims.

On April 2, 2020, Plaintiff filed a Motion for Approval of Settlement Agreement to be heard on the same date at the instant Motion. The Settlement Agreement proposes to settle claims and disputes related to the bankruptcy estate's interest in the March 6, 2018 transfer of Debtor's undivided 50% ownership interest to the Defendants in real property commonly known as 9747 Treetop Drive, Stockton, California.

The court having granted the Motion and approved the settlement of the claims asserted in this Adversary Proceeding, the Motion for Summary Judgment is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Summary Judgment filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Plaintiff") 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 Summary Judgment is dismissed without prejudice.

12. 19-90400-E-7 BLF-4

JUSTAN JOHNSON
Steve Altman

MOTION TO RESERVE ASSET AND LOAN REFINANCED PROCEEDS UPON CLOSING OF THE CASE
3-26-20 [56]

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case 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 Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case is xxxxx.

This Chapter 7 case is an example of the best in all parties and their professionals. The bankruptcy estate includes an inheritance to be received by the Debtor, which is more than sufficient to pay all claims in full, pay all administrative expenses, and generate a substantial surplus estate for the Debtor. The Debtor disclosed the pending inheritance at the First Meeting of Creditors, the decedent having passed away before this case was filed.

Debtor commenced this Chapter 7 case in *pro se*, not appreciating the legal effect of an inheritance and the broad reach of the provisions of 11 U.S.C. § 541 in creating the bankruptcy estate. The Trustee, appreciating the economic consequences of liquidating such asset, a home (the "Home"), to Debtor, encouraged Debtor to obtain counsel, rather than the Trustee blundering forward to liquidate the home.

Debtor has engaged knowledgeable, experienced counsel, who has worked with the Trustee and Trustee's counsel to structure an economically advantageous resolution.

The Debtor initially filed a Motion to Dismiss this case, representing that after dismissal Debtor would voluntarily pay the creditors from a refinance. Dckt. 24. Through a series of hearings on the Motion, it was represented to the court that Debtor could obtain a loan, only if the bankruptcy case was dismissed. The court denied without prejudice the Motion, not convinced that the Debtor would be able to insure that creditors were paid. Civil Minutes, Dckt. 54. The court noted that the bankruptcy estate could retain a lien on the property, with the case reopened upon a refinance or sale, for the payment of claims.

REVIEW OF MOTION

The present Motion has been filed by Gary F. Farrar ("the Chapter 7 Trustee"), requesting "Court authorization for the estate to reserve its rights to the only asset [the interest in the House] that Mr. Farrar may be able to administer in this case. . . so that when the case closes the [House] will not automatically abandoned to the Debtor but will remain property of the estate." Motion, p. 2:1-6. The estate's interest is in the real property commonly known as 5112 Soave Lane, Salida, California (the "House"). This request is so that when the case closes the Property will not be automatically abandoned to the Debtor but will remain property of the estate.

The Motion states that the Debtor and Trustee, with the assistance of their attorneys, have a solution that will allow the Trustee to "reserve the asset" [not a defined term in the Motion]. The proposal is stated as:

a. The court enter an order to "reserve the asset and proceeds from the loan refinance of the [Home] so the case will close without delay." Motion, ¶ 10.a.

b. "Directing" [order?] that the Debtor "will move forward" to secure financing on the Home and that the proceeds of the loan will be paid directly to the Trustee or Debtor's counsel. *Id.* ¶ 10.b.

c. Upon the loan proceeds being received, Debtor's counsel will reopen the case to allow the Trustee administer the loan proceeds, with the fee for reopening case waived. *Id.* ¶ 10.c.

Trustee asserts that the Debtor is in accord with the filing of this Motion to reserve the asset, direct Debtor to move forward with the financing, with loan proceeds going to the Trustee or Debtor's Counsel attorney-client trust account, and directing Debtor's Counsel to file motion to reopen the case so that Trustee may administer the proceeds. Additionally, in the event that the loan is not approved, they have also agreed for Debtor's Counsel to file a motion to reopen the case and allow Trustee to administer the Property.

DISCUSSION

The interest in the House is the only unencumbered asset of the estate with nonexempt equity that Trustee may be able to liquidate for the benefit of unsecured creditors. Thus, allowing Trustee to reserve its rights over this asset will move the case forward and can close without further delay.

Trustee points the court to *In re Delash*, where the court held that under Section 554(c), the court "as permitted in the preamble of section 554(c), the court may expressly order that a scheduled asset will not be abandoned when the case is closed. *In re Delash*, 260 B.R. 4, 9 (Bankr. E.D. Cal. 2000). Further noting that "[t]his permits a trustee to close the case yet preserve for the estate an asset with possible future value even though it has no immediately realizable value." *Id*.

In further support of the appropriateness of this request, Trustee discusses *In Re Hart*, where the court formulated a factors test to determine whether it is justifiable to close a case without an unadministered asset being abandoned to the Debtor. *In re Hart*, 76 B.R. 774 (Bankr. C.D. Cal. 1987). Closing a case would be justifiable under the following circumstances:

> 1. A reasonable possibility must exist that an asset valuable enough to pay substantial dividends to the creditors may be recovered in the future. A potential recovery of minimal value to the creditors would not be sufficient reason to except a claim from abandonment.
>
> 2. The event that will trigger the reopening of the case for distribution of that asset must be well-defined. It should not require any further action by any representative of the estate, for if action is required, then the Chapter 7 Trustee should not be discharged until the necessary steps are completed.
>
> 3. The events that may result in payment to the estate must not be likely to occur soon, for if the asset was expected to be liquidated within say, a year, the case should probably be kept open until then.

In re Hart, 76 B.R. 774, 777 (Bankr. C.D. Cal. 1987).

Trustee argues that all factors are met on the basis that: (1) the Property will have substantial value in the future and once Debtor has obtained the loan and Trustee is allowed to administered the proceeds, Trustee will be able to make a significant distribution to creditors; (2) the trigger for reopening the case is Debtor's Counsel receipt of loan proceeds or the receipt of notification that the loan cannot be approved, thus the trigger is well-defined; and lastly, (3) at this moment it is unknown when or if the Debtor will received the loan proceeds, though Debtor's Counsel reports that they have been diligently working with the lender so that the loan can be approved.

INTEREST RETAINED

In the Motion, the Trustee makes general reference to the court ordering that the estate will "reserve the asset and proceeds from the loan refinance." The Trustee does not state what is the "asset." If it is the Home, then one questions how the Debtor can obtain the loan and grant the lender a deed of trust. Then, the Trustee requests that the court order that the estate "retain" the loan proceeds which do not now exist.

In the Motion, the Trustee states that it is not likely that the Debtor would obtain any loan proceeds, if at all. Thus, it appears that the Trustee states that he does not know if, from this valuable asset of the estate, any recovery will be made for the estate. In the Motion to Dismiss, the Debtor stated that he "desires to procure a real property loan." Motion to Dismiss, ¶ 8. A); Dckt. 24. In February 2020, Debtor reported that the loan had been "preliminarily finalized." Civil Minutes, p. 2; Dckt. 54.

It is unclear to the court what is not to be abandoned upon the dismissal of this case. 11 U.S.C. § 349(b)(3).

At the hearing, the attorneys for the respective parties clarified what property and rights were being retained in the estate notwithstanding the dismissal of this case, stating **xxxxxxxxxx**

Dismissal vs. Discharge

The Parties have presented this to the court as it being necessary for this case to be dismissed and Debtor not being granted a discharge. It has been represented that a discharge would impair Debtor's ability to obtain a loan.

On May 5, 2020, the Clerk of the Court issued a discharge for the Debtor. Dckt. 61. This appears to be a clerical error on the Clerk's part, if the Debtor does not intend to obtain a discharge. Such clerical error can be addressed by the court.

At the hearing, counsel for Debtor reported **xxxxxxxxxx**

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 Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case filed by Gary F. Farrar ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case is **xxxxxxxxxx**

13. 19-90382-E-7 TRACY SMITH — MOTION FOR ENTRY OF DEFAULT JUDGMENT
19-9017 MB-2
KAUFMAN ET AL V. SMITH — 3-26-20 [27]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Chapter 7 Trustee, and Office of the United States Trustee on March 27, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is xxxxx.

Jonathan Kaufman ("Kaufman"), Jonathan Kaufman IRA ("Kaufman IRA"), and Shinjin Equity, LLC ("Shinjin") (collectively "Plaintiffs") filed the instant Motion for Default Judgment on March 26, 2020. Dckt. 32. Plaintiff seeks a default judgment against Tracy Emery Smith ("Defendant") in the instant Adversary Proceeding No. 19-09017.

The instant Adversary Proceeding was commenced on October 24, 2019. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on October 25, 2019. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 10.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on December 6, 2019. Dckt. 16.

SUMMARY OF COMPLAINT

Plaintiff filed a complaint to determine dischargeability of debt under 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). The Complaint contains the following general allegations as summarized by the court:

A. Plaintiffs are creditors of Defendant by having loaned money or invested approximately $905,796.00 in various business entities controlled by Defendant for the purpose of real estate development and for the purchase, remodel, and sale of mobile home projects throughout California.

B. Defendant is the officer, director, or owner of the various Smith entities for the real estate projects at issue.

C. Defendant obtained money from Plaintiffs by engaging in false misrepresentations. Defendant set up various schemes beginning in September 2016 through May 2018 where Plaintiffs loaned or invested money in Defendant's real estate projects which never came to fruition. Defendant represented that he had a valid contractor license when in fact he did not. He also misrepresented the hiring of architects and purchase of high end furniture which never took place. Moreover, the real estate projects were never completed and the money was not returned to Plaintiffs.

D. Defendant also misrepresented ventures for selling mobile estate home estates that did not take place at the numbers projected and Plaintiffs sustained losses in these investments as well.

E. Defendant created business entities for real estate and lending purposes that once Plaintiffs and other investors would make investments, Defendant would take the money and the business entities would be dissolved for unpaid taxes. Defendant did not give any accountings or payments to Plaintiffs from these business entities.

F. Defendant failed to disclose that he had been convicted of a felony for arson of a restaurant. This is a material fact because it affects Defendant and his business entities ability to do business and obtained financing.

G. Defendant's misrepresentations to Plaintiff were false and he knew so at the time he made them. Defendant had no intention of using the funds received from Plaintiff to complete any of the projects. Defendant's representation that he was competent and experienced and had the means to complete the projects were false. Plaintiffs reasonably relied on Defendant's misrepresentations. Plaintiff would have not invested $1,056,502 with Defendant and his entities but for their reliance on Defendant's false representations.

H. Defendant was acting in a fiduciary capacity when he engaged in this fraud and/or defalcation by misrepresenting his intentions that he would use the

money for the real estate projects but in fact Defendant used most, if not all, the funds for his personal benefit and not for the projects.

I. Defendant's actions constitute larceny because Defendant wrongfully and with fraudulent intent converted money for his own use.

J. Defendant's actions have caused Plaintiffs damages in the amount of $905,796.

Prayer

Plaintiff requests the following relief in the Complaint's prayer:

A. Determine the debts owed to Plaintiffs and Plaintiff's claims are nondischeargeable pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6);

B. For a judgment in favor of Plaintiffs and against Defendant for $905,796;

C. For interest on the damages caused by Tracy Emery Smith, according to proof;

D. For punitive damages according to proof;

E. For the costs of suit herein, including reasonable attorney's fees; and

F. For such other and further relief as the Court deems just, equitable, and proper.

RELIEF SOUGHT IN MOTION FOR DEFAULT JUDGMENT

Plaintiffs filed the Motion for Default Judgment, accompanied by: a Memorandum of Points and Authorities, Dckt. 32, the Declaration of Jonathan Kaufman, Dckt. 29, the Declaration of Sarah M. Hacker, Dckt. 30, the Declaration of Paul R. Gaus, Dckt. 31, and Exhibits A through U. Dckt. 34.

In the Motion, Plaintiff requests the following relief:

1. Judgement against the defaulting Defendant for $985,563.67, which includes:

   a. $865,796.94 in compensatory damages,

   b. $50,000.00 in punitive damages, and

   c. $69,767.53 in prejudgment interest.

2. Determine that the Judgment against Defendant is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6).

REVIEW OF THE MOTION FOR ENTRY OF DEFAULT JUDGMENT

On March 26, 2020, Plaintiffs filed the instant Motion for Entry of Default Judgment pursuant to Fed. R. Bankr. P. 7055. Dckt. 27. Plaintiff asserts that the evidence offered in support of this Motion supports the well-pleaded factual allegations in the Complaint.

The court begins its consideration of the requested relief with the Motion itself and the grounds with particularity stated therein. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007. The grounds stated with particularity consist of the following:

1. Plaintiffs bring motion pursuant to FRCP 55, as incorporated by FRBP 7055, obtaining a default judgment is a two-step process requiring entry of defendant's default; and (2) entry of default judgment. *See In re McGee*, 359 B.R. 770 (B.A.P. 9th Cir. 2006).

2. Plaintiffs filed the Complaint on October 24, 2019. Dckt. 1.

3. The Clerk entered Defendant's Default on December 6, 2019. Dckt. 16.

4. This court extended Plaintiffs' time to move for a default judgment on December 28, 2019. Dckt. 25.

5. Default is now appropriate because Plaintiffs evidence offered in support of this Motion supports the well-pleaded factual allegations in the Complaint. *See In re McGee*, 359 B.R. 770 (B.A.P. 9th Cir. 2006).

6. This Motion will be based on this Motion, the Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Jonathan Kaufman, the Declaration of Sarah M. Hacker, the Declaration of Paul R. Gaus, the Request for Judicial Notice and the Exhibits filed in support of the Motion.

Motion, Dckt. 27. The above is the entirety of what is stated in the Motion.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007. Fed. R. Bankr. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion."

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

In considering the Twombly and Iqbal requirements, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

ADDITIONAL DOCUMENTS FILED WITH THE MOTION

A Memorandum of Points and Authorities in support of the Motion was also filed. Dckt. 32. The Points and Authorities begins with a rich statement of particular factual grounds and events upon which the Motion is based. The Points and Authorities then, beginning on page 5, provides the legal authorities and arguments applying the legal authorities to the "grounds" as stated in the first four pages of the Points and Authorities.

The legal points and authorities factual background outlines a number of business entities set up by the Defendant-Debtor. It explains the scheme set up by Defendant to seduce investors into trusting Defendant-Debtor. The legal points and authorities then identify seven different financial investments in which Defendant-Debtor induced Plaintiff to invest.

In the legal points and authorities set forth in Paragraph 4, states the following:

> (a) Defendant was a licensed contractor in the State of California (*Id*. at ¶ 36);
>
> (b) Defendant had arranged the sale of mobile homes with the Modesto Mobile Homes Estates or would work with the appropriate agencies in order to facilitate their sale in the case of the Lemoore Mobile Home Project (*Id*. at ¶ 27, 62);
>
> (c) Defendant had hired specialists such as an architect (in the case of the Mariscal Project) or that he would purchase high end furniture to finish the Kiva Project (*Id.* at ¶ 9, 45);
>
> (d) Defendant failed to disclose that he had been convicted of felony arson in Turlock, CA in 2014 (*Id.* at ¶ 6.)

Points and Authorities, ¶ 4; Dckt. 32.

In Paragraph 5, the legal points and authorities include a statement of the bank account information for transfers made in reliance on the representations made by Defendant-Debtor. *Id.*

The points and authorities continue stating factual allegations of what representations were false and how they were false, and the multiple failures of Defendant-Debtor to perform the promises made to induce Plaintiff to invest the monies.

Next, the Declaration of Jonathan Kaufman, one of the Plaintiffs in this adversary proceeding was filed. Dckt. 29. Mr. Kaufman is the sole member of Plaintiff Shinjin Equity, LLC and the account holder of Plaintiff Jonathan Kaufman, IRA. *Id*. at ¶ 2. He testifies as to his dealings with Defendant and how Defendant defrauded him in the amount of $865,796.04 by operating a Ponzi-scheme using various business entities. Plaintiff testifies to the alleged material and fraudulent misrepresentations and omission made by Defendant that induced Plaintiff to loan and invest money with Defendant. *Id*., pp. 2-12. Plaintiff also testifies as to the damages he is seeking, including compensatory damages in various amount per alleged business dealing resulting from Defendants misrepresentations, prejudgment interest, and punitive damages. *Id*.

The Declaration of Sarah M. Hacker is also provided. Dckt. 30. She testifies that she was retained by Mr. Kaufman for the purpose of investigating his business dealings with Defendant, including the joint venture agreements with Defendant for the purchase, sale and remodel of mobile homes, specifically those at Modesto Mobile Homes estates and Kings Mobile Home Estates. *Id*. at ¶¶ 4, 5, 7. She testifies that she investigated Defendant's business dealings at Modesto Western Mobile Homes estates and Kings Mobile Home Estates. *Id*. at ¶¶ 6, 8. Ms. Hacker found that Modesto Western Mobile Homes was unaware of any agreement to sell the amount of homes purported by Defendant. *Id*. at ¶ 6. She also found that Kings Mobile Homes Estates had never heard of Defendant and that Kings Homes does not typically permit investors to sell mobile homes on the property. *Id*. at ¶ 8. She provided this information to Mr. Kaufman. *Id*. at ¶¶ 6, 8.

Third, the Declaration of Paul R. Gaus, attorney at Plaintiff's law firm who testifies that he accessed the documents that have been filed as Exhibits T thru U in support of the Motion. Declaration, p. 2.

The properly authenticated exhibits filed in support of the Motion are:

Exhibits A - K	**Exhibits L - U**
EX. A: Capital One Statement ending 1/23/2017	EX. L: Equity Trust Company Promissory Note DOI dated 3/27/2018
EX. B: Confidential Private Placement Memorandum DKI Situational Fund #3	EX. M: Joint Venture Agreement Shinjin Equity, LLC and Sharp Investors, Inc. dated 6/22/2018
EX. C: Capital One Statement ending 11/20/2017	EX. N: Capital One Statement ending 06/29/2018
EX. D: Promissory Note DKI Situational Fund #3 dated 11/15/2017	EX. O: Promissory Note dated 6/22/2018
EX. E: Joint Venture Agreement Shinjin Equity, LLC and Sharp Investors, Inc. dated 1/31/2018	EX. P: Kings Mobile Homes
EX. F: Capital One Statement ending 2/21/2018	EX. Q: Subscription Agreement Downkicker Holding Corp.
EX. G: Promissory Note dated 1/30/2018	EX. R: Subscription Agreement Downkicker Holding Corp.
EX. H: Modesto Mobile Homes	EX. S: USBC Eastern District Civil Minutes Adv. No. 19-09018 dated 2/6/2020
EX. I: Downkicker Holding Corp. Proposal dated 4/14/2018	EX. T: USBC Eastern District Civil Minutes Adv. No. 19-09018 dated 1/9/2020
EX. J: Bank Records dated 1/1/2018 to 7/31/2018	EX. U: Personnel License List- Tracy Smith Emery

EX. K: Beneficiary Information	

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

Debts for Money, Property or Services Obtained by False Pretenses or Representations, or Actual Fraud Pursuant to 11 U.S.C. § 523(a)(2)(A)

11 U.S.C. § 523(a)(2)(A) requires the creditor demonstrate five elements:

(1) the debtor made ... representations;

(2) that at the time he knew they were false;

(3) that he made them with the intention and purpose of deceiving the creditor;

(4) that the creditor relied on such representations; [and]

(5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

In re Sabban, 600 F.3d 1219, 1222 (9th Cir. 2010). Creditor must show these elements by a preponderance of evidence. *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000). 11 U.S.C. § 523(a)(2)(A) prevents the discharge of all liability arising from fraud. *Cohen v. de la Cruz,* 523 U.S. 213, 215 (1998).

Additionally, in 2016 the United States Supreme Court in *Husky International Electronics, Inc. v. Ritz*, __ U.S. __, 136 S. Ct. 1581 (2016) held that "the phrase [. . .] "actual fraud" to encompass fraudulent conveyance schemes, even when those schemes do not involve a false representation." *Husky International Electronics, Inc. v. Ritz*, __ U.S. __, 136 S. Ct. 1581 (2016).

Debts for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny pursuant to 11 U.S.C. § 523(a)(4)

In section 523(a)(4), the term "while acting in a fiduciary capacity" does not qualify the words "embezzlement" or "larceny." Therefore, any debt resulting from embezzlement or larceny falls within the exception of clause (4). *In re Booker*, 165 B.R. 164 (Bankr. M.D.N.C. 1994); *see also In re Brady*, 101 F.3d 1165 (6th Cir. 1996); *In re Littleton*, 942 F.2d 551 (9th Cir. 1991).

The required elements of embezzlement are: (1) appropriation of funds for the debtor's own benefit by fraudulent intent or deceit; (2) the deposit of the resulting funds in an account accessible only to the debtor; and (3) the disbursal or use of those funds without explanation of reason or purpose. *In re Bryant*, 28 C.B.C.2d 184, 147 B.R. 507 (Bankr. W.D. Mo. 1992). For purposes of section 523(a)(4) it is improper to automatically assume embezzlement has occurred merely because property is missing, since it could be missing simply because of noncompliance with contractual terms. *In re Hofmann*, 27 C.B.C.2d 1291, 144 B.R. 459 (Bankr. D.N.D. 1992), *aff'd*, 5 F.3d 1170 (8th Cir. 1993); *see also In re Rose*, 934 F.2d 901 (7th Cir. 1991).

In short, section 523(a)(4) excepts from discharge debts resulting from the fraudulent appropriation of another's property, whether the appropriation was unlawful at the outset, and therefore a larceny, or whether the appropriation took place unlawfully after the property was entrusted to the debtor's care, and therefore was an embezzlement. 4 Collier on Bankruptcy P 523.10 (16th 2019)

Debt for Willful and Malicious Injury Pursuant to 11 U.S.C. § 523(a)(6)

In order for a claim to be nondischargeable pursuant to 11 U.S.C. § 523(a)(6) both willful and malicious injury must be established. *Ormsby v. First Am. Title Co. (In re Ormsby),* 591 F.3d 1199, 1206 (9th Cir. 2010). The willful injury standard in this Circuit is met "only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su* (*In re Su*), 290 F.3d 1140, 1142 (9th Cir. 2002). Whereas the malicious injury standard is satisfied by demonstrating that the injury "involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Petralia v. Jercich* (*In re Jercich*), 238 F.3d 1202, 1209 (9th Cir. 2001) (internal citations omitted).

For a determination that an obligation is nondischargeable pursuant to 11 U.S.C. § 523(a) the Plaintiff must establish the elements by the "ordinary preponderance-of-the-evidence standard." *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

DISCUSSION

At this juncture, the court is presented with a Motion, which if taken as the grounds asserted by Movant, is insufficient to grant any of the relief requested.

At the hearing, **xxxxxxxxx**

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 Entry of Default Judgment filed by Jonathan Kaufman ("Kaufman"), Jonathan Kaufman IRA ("Kaufman IRA"), and Shinjin Equity, LLC ("Shinjin") (collectively "Plaintiffs") 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 Entry of Default Judgment is **xxxxxxxx**.

14. 20-90210-E-11 AF-4 **14 thru 16**

JOHN YAP AND IRENE LOKE
Arasto Farsad

MOTION TO VALUE COLLATERAL OF TRUIST BANK/NATIONSTAR MORTGAGE LLC AND/OR MOTION TO VALUE COLLATERAL OF CIT BANK, NATIONAL ASSOCIATION, MOTION TO VALUE COLLATERAL OF LOMAREY, INC.
4-10-20 [38]

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's in Possession, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 10, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of CIT Bank, National Association and the Secured Claim of Lomarey, Inc. is xxxxxxxxxx.

Joinder of Multiple Parties One Contested Matter

The present Motion (a Contested Matter as provided in Federal Rule of Bankruptcy Procedure 9014) seeks relief pursuant to 11 U.S.C. § 506(a) against two different persons concerning two different claims. While in an adversary proceeding Federal Rule of Civil Procedure 20, as incorporated into Federal Rule of Bankruptcy Procedure 7020) permits the joinder of multiple parties in one adversary proceeding if there is a common question of law or fact to all defendants. Federal Rule of Bankruptcy Procedure 7020 is not automatically incorporated into contested matter practice. Fed. R. Bankr. P. 9014(c).

However, the court may, and does in this Contested Matter, make Federal Rule of Bankruptcy Procedure 7020 and thereby Federal Rule of Civil Procedure 20 applicable to allow for the permissive joinder of CIT Bank, National Association, and Lomarey, Inc. as respondent parties herein.

REVIEW OF MOTION

The Motion to Value filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") to value two claims secured by real property commonly known as 7400 Chantilly Way, Hughson, California ("Property"). Debtor seeks to value the Property at a fair market value of $500,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

IDENTITY OF CREDITORS TO HAVE SECURED CLAIMS VALUED

The Motion states that there are two mortgages/deeds of trust recorded against the Property and a judgment lien. These encumbrances are identified by the Debtor in Possession as follows.

Senior Deed of Trust

The First Deed of Trust is stated to have originated with Suntrust Mortgage Inc. in the amount of ($576,00.00). A copy of the Suntrust Deed of Trust is provided as Exhibit 1. Dckt. 41. The Motion then states that this note and deed of trust were assigned to U.S. Bank National Association, as Trustee for the Certificateholders of the LSX 2006-10N Trust Fund, and that Nationstar Mortgage, dba Mr. Cooper, is the loan servicer for U.S. Bank, N.A., as trustee.

Proof of Claim No. 3-1 has been filed by U.S. Bank, N.A., as trustee, for this claim, which is stated in Proof of Claim 3-1 to be a ($517,427.33) secured claim for which the Property is identified as the collateral.

Suntrust

The Motion continues, reciting that Suntrust Mortgage, Inc. has surrendered its registration to do business in California and that Debtor in Possession presents corporate records showing that it merged with BB&T, and the merged entity is identified as Truist Bank. Debtor in Possession has served Truist Bank with a copy of the pleadings.

Second Deed of Trust

The Motion then identifies a second deed of trust securing an obligation originally owed to IndyMac Bank, F.S.B. in the original amount of ($108,000.00). The Motion then states that IndyMac Bank, FSB was sold to One West Bank, FSB, which was then merged with CIT Group, Inc., which is now doing business as CIT Bank, National Association.

Debtor in Possession asserts that this claim is at least ($131,152.00).

No documents showing any assignments or transfers of the deed of trust have been filed.

No proof of claim has been filed for this debt.

Judgment Lien

The third obligation encumbering the Property is identified as the judgment lien of Lomarey, Inc., which is stated to be in the approximate amount of ($480,148.00). This judgment lien is junior in priority to the two deeds of trust, having been recorded on March 11, 2014.

No proof of claim has been filed by Lomarey, Inc.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $517,427.33. Proof of Claim No. 3-1. The Motion does not seek to value this claim, stating it is protected by the anti-modification provisions of 11 U.S.C. § 1123(b)(5) because this Property is the Debtors' primary residence and the only collateral for the U.S. Bank, N.A., as trustee, secured claim.

The Motion states that Debtor in Possession requested that a local Realtor provide an opinion as to value of the Property. The Realtor, Regina Zabarte, stated (to an unidentified person) that the property has a value of $500,000. The Debtor in Possession believes that Ms. Zabarte's opinion is accurate. The Debtor in Possession conducted additional research from other third parties identified as Zillow.com and Redfin.com.

The only evidence of value presented is the Declaration of John Yap, one of the Debtors. Dckt. 40. It appears that his "testimony" is a cut and paste of the allegations in the Motion that Regina Zabarte

has an opinion that the Property has a value of $500,000 and that John Yap has done other "research" by reviewing Zillow.com and Redfin.com to have an opinion as to the value of the property.

While the owner of a property may have an opinion as to value of property they own, it appears that the only opinion being presented is that of a person who is not a witness before the court - Regina Zabarte. Mr. Yap is only repeating what he heard Regina Zabarte say out of court.

With respect to evidence of value, counsel for the Debtor in Possession stated at the hearing, **xxxxxxxxxx**

~~The Property having a value of $500,000.00 and it being encumbered by the First Deed of Trust securing the U.S. Bank, N.A., as trustee, claim of ($517,427.33) there is no value in the Property for the junior lien claims.~~

~~Creditor CIT's second deed of trust secures a claim with a balance of approximately $131,152.00. Schedule D, Dckt. 22. Creditor CIT's claim secured by a junior deed of trust is completely under-collateralized, and its secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

~~Creditor Lomarey's junior in priority judgment lien securing a judgment obligation of approximately ($480,148.00) is completely under-collateralized, and its secured claim is determined to be in the amount of $0.00, the value of the collateral, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.~~

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

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

~~The Motion to Value Collateral and Secured Claim filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of CIT Bank, National Association secured by a second in priority deed of trust recorded against the real property commonly known as 7400 Chantilly Way, Hughson, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $500,000.00~~

and is encumbered by a senior lien securing a claim in the amount of $516,785.00, which exceeds the value of the Property that is subject to Creditor's lien.

IT IS FURTHER ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Lormarey, Inc. secured by the abstract of judgment recorded on March 11, 2014 with the Office of the San Joaquin County Recorder (Doc. No. 2014-0014631-00), relating to the judgment in Lomarey, Inc. v. John Yap, Irene Lai Loke, et al, California Superior Court for the County of San Joaquin Case No. 39-2011-00259469, that encumbers the real property commonly known as 7400 Chantilly Way, Hughson, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $500,000.00 and is encumbered by a senior lien securing a claim in the amount of $516,785.00, which exceeds the value of the Property that is subject to Creditor's lien. This order does not value any secured claim of Lormarey, Inc. to the extent that the abstract of judgment encumbers any other property.

15. 20-90210-E-11 AF-3

JOHN YAP AND IRENE LOKE
Arasto Farsad

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON AND/OR MOTION TO VALUE COLLATERAL OF THE PNC FINANCIAL SERVICES GROUP, INC. , MOTION TO VALUE COLLATERAL OF PERSOLVE, LLC
4-9-20 [33]

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's in Possession, Creditor, parties requesting special notice, and Office of the United States Trustee on April 9, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC is xxxxx.

Joinder of Multiple Parties One Contested Matter

The present Motion (a Contested Matter as provided in Federal Rule of Bankruptcy Procedure 9014) seeks relief pursuant to 11 U.S.C. § 506(a) against two different persons concerning two different claims. While in an adversary proceeding Federal Rule of Civil Procedure 20, as incorporated into Federal Rule of Bankruptcy Procedure 7020) permits the joinder of multiple parties in one adversary proceeding if there is a common question of law or fact to all defendants, Federal Rule of Bankruptcy Procedure 7020 is not automatically incorporated into contested matter practice. Fed. R. Bankr. P. 9014(c).

However, the court may, and does in this Contested Matter, make Federal Rule of Bankruptcy Procedure 7020 and thereby Federal Rule of Civil Procedure 20 applicable to allow for the permissive

joinder of Creditor Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC as respondent parties herein.

REVIEW OF MOTION

The Motion to Value filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") to value two secured claims. The Motion is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 35. Debtor is the owner of the subject real property commonly known as 1106 Lovell Avenue, Campbell, California ("Property"). Debtor seeks to value the Property at a fair market value of $900,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

IDENTITY OF CREDITORS TO HAVE SECURED CLAIMS VALUED

The Motion states that there are two mortgages/deeds of trust recorded against the Property and a judgment lien. These encumbrances are identified by the Debtor in Possession as follows.

Senior Deed of Trust

The First Deed of Trust is stated to have originated with Countrywide Home Loans, Inc. in the amount of $565,000.00. A copy of the Countrywide Deed of Trust is provided as Exhibit 1. Dckt. 36. The Motion then states that this note and deed of trust were assigned to The Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative loan Trust 2007-

OH2, Mortgage Pass-Through Certificates, Series 2007, and that Mellon NewRez LLC, dba Shellpoint Mortgage Servicing for Bank of New York Mellon, as trustee.

Proof of Claim No. 2-1 has been filed by Bank of New York Mellon, as trustee, for this claim, which is stated in Proof of Claim 2-1 to be a ($340,814.41) secured claim for which the Property is identified as the collateral.

Second Deed of Trust

The Motion then identifies a Second Deed of Trust securing an obligation originally owed to National City Bank in the original amount of ($154,950.00). The Motion then states PNC Financial Services Group, Inc. acquired National City Bank.

The Motion then goes further, stating that a company named Dreambuilder Investments, LLC claims to hold ownership of the note secured by the Second Deed of Trust.

Debtor in Possession asserts that this claim is at least ($131,152.00).

No documents showing any assignments or transfers of the deed of trust have been filed.

No proof of claim has been filed for this debt.

The identity of the actual creditor whose claim is to be valued has not been made by the Debtor in Possession.

Judgment Lien

The third obligation encumbering the Property is identified as the judgment lien of Persolve, LLC, which is stated to be in the approximate amount of ($36,670.64). This judgment lien is junior in priority to the two deeds of trust, having been recorded on December 31, 2014.

Proof of Claim No. 1-1 has been filed by Persolve, LLC, asserting an unsecured claim in the amount of ($53,535.09).

OPPOSITION

Creditor Bank of New York Mellon ("Mellon") filed an Opposition. Dckt. 59. First, Creditor opposes on the basis that Debtor's valuation amount is based on a verbal price opinion after review of the Property, without including a formal written broker's Price Opinion or Appraisal. *Id*. at p. 2. Creditor has obtained a Broker's Price Opinion ("BPO") valuing the Property at $1,280,000 as of April 2, 2020. *Id*. Thus, Creditor argues the value of the Property is a material fact in dispute, and requests the opportunity to have an interior inspection verified appraisal. *Id*. Next, Creditor opposes to the extent that the motion seems to improperly value the Property as of the bankruptcy filing date as opposed to at or near confirmation. *Id*. at p. 3. Debtor's value does not include an "as of" date, and Debtor has not filed a proposed Chapter 11 Plan. *Id*. Creditor points out that a valuation in a Chapter 11 case should be done at or near the time of confirmation. *Id*. Third, Creditor reserves its right to object to any subsequently filed Chapter 11 Plan based on the Absolute Priority Rule, the violation of 11 U.S.C. 1123(b)(5), lack of feasibility, bad faith, and any

other grounds that may exist to object to the Plan. Lastly, Creditor also reserves the right to make an election under 11 U.S.C. 1111(b). *Id*.

Creditor requests the hearing be continued so that Creditor can obtain its own appraisal or that the Motion be denied.

DISCUSSION

Creditor Bank of New York Mellon, as trustee, the senior in priority first deed of trust, secures a claim with a balance of approximately $978,867.00. Schedule D, Dckt. 22. Creditor PNC's second deed of trust secures a claim with a balance of approximately $154,950.00. *Id*. Creditor Persolve, LLC has a judgment lien against the Property in the amount of $32,671.00.

The Motion states that Debtor in Possession requested that a local Realtor provide an opinion as to value of the Property. The Realtor, Regina Zabarte, stated (to an unidentified person) that the property has a value of $900,000. The Debtor in Possession believes that Ms. Zabarte's opinion is accurate. The Debtor in Possession conducted additional research from other third parties identified as Zillow.com and Redfin.com.

The only evidence of value presented is the Declaration of John Yap, one of the Debtors. Dckt. 40. It appears that his "testimony" is a cut and paste of the allegations in the Motion that Regina Zabarte has an opinion that the Property has a value of $900,000 and that John Yap has done other "research" by reviewing Zillow. com and Redfin.com to have an opinion as to the value of the property.

While the owner of a property may have an opinion as to value of property they own, it appears that the only opinion being presented is that of a person who is not a witness before the court - Regina Zabarte. Mr. Yap is only repeating what he heard Regina Zabarte say out of court.

Equally challenging is that there is a significant missing piece to the puzzle - who is the creditor who actually holds the note secured by the second deed of trust. It could be PNC Financial Services Group, Inc. Or, it could be Dreambuilder Investments, LLC. No evidence of the record title is provided and it appears that no discovery has been done for Debtor in Possession to identify the real party in interest.

At this juncture it appears that proceeding on this Motion is premature. Bank of New York Mellon, as trustee, needs to proceed with its investigation and discovery concerning the value of the Property. Additionally, the Debtor in Possession needs to identify the real party in interest against whom the valuation is made.

At the hearing, **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral and Secured Claim filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") having been presented to the court,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral and Secured Claim is **XXXXXXXXXX**

16. 20-90210-E-11 AF-2 | **JOHN YAP AND IRENE LOKE** **Arasto Farsad** | **MOTION TO EMPLOY ARASTO FARSAD AS ATTORNEY(S)** **4-6-20 [27]**

Final Ruling: No appearance at the May 14, 2020 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 Debtors in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2020. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") seeks to employ Arasto Farsad ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel to advise and guide as to the proper performance of all duties required under Chapter 11 of the Bankruptcy Code and Rules.

Debtor in Possession argues that Counsel's appointment and retention is necessary to assist Chapter 11 Debtor in performing duties as a Debtor in Possession, to propose and obtain confirmation of a plan of reorganization, and to negotiate with the Debtors' creditors.

The court summarizes the terms of employment as follows (the full terms are stated in the Agreement, Exhibit A, Dckt. 31):

A. Representation includes all matters that arise within the case, except for appeals.

B. The Firm's fees are based on hourly rate with Arasto Farsad, Managing Partner at $350.00, Nancy Weng, Associate at $350.00, and Paralegals at $100.00.

C. Debtor to also pay for the costs and expenses while performing legal services.

D. The Firm has receive a retainer of $20,000.00 from Debtor.

E. Any dispute related to the employment and the payment of fees and expenses will be resolved by in this court.

Arasto Farsad, a Partner of Farsad Law Office, P.C., testifies that he has been employed by Debtor in Possession to assist them in the performance of their duties; he has been practicing bankruptcy since approximately 2010; has several other Chapter 11 cases in this court; he is a disinterested person; and there are no arrangements between the Firm and any other person for the sharing of fees. Farsad testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Arasto Farsad as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement/Services Agreement filed as Exhibit A, Dckt. 31. Approval of the hourly rate based compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Arasto Farsad as Counsel for Debtor in Possession on the terms and conditions as set forth in the Letter of Engagement/Services Agreement filed as Exhibit A, Dckt. 31.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

FINAL RULINGS

17. 17-90516-E-7 HCS-10 17 thru 19

VERA JOHNSON
Thomas Hogan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BORTON PETRINI, LLP FOR TAMIE L. CUMMINS, SPECIAL COUNSEL(S)
4-8-20 [139]

Final Ruling: No appearance at the May 14, 2020 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, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Tamie L. Cummins, of Borton Petrini, LLP, the Special Counsel ("Applicant") for Gary R. Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 5, 2018, through December 9, 2019. The order of the court approving employment of Applicant was entered on April 4, 2018 and September 2, 2019. Dckt. 26, 48. Applicant requests fees in the amount of $13,704.50.

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 assisting Trustee and general counsel with investigation and litigation of the estate's interests in the Debtor's marital dissolution case with her former husband. The Estate has $228,000.00 of unencumbered monies to be administered as of the filing of the application. 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.

Marital Dissolution Litigation and Administration of Real Property: Applicant spent 38.1 hours in this category. Applicant investigated, developed legal strategy and litigated the estate's interests in the Debtor's marital dissolution case with her former husband, Mike Johnson; assisted Trustee in negotiating and resolving a motion for relief from stay relating to the Dissolution; and analyzed and investigated the estate's interest in real property which eventually led to Trustee's successful sale and administration of various real property. Special Counsel's efforts enabled the Trustee to recover more than $228,000 for the estate.

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**
Tamie L. Cummins	34.30	$375.00	$12,862.50
Elizabeth A. Baroni-Rodriguez	1.9	$140.00	$266.00
Lauren Franzella	0.20	$320.00	$64.00
Jessica Dorn	1.60	$320.00	$512.00
	0	$0.00	$0.00

Total Fees for Period of Application	$13,704.50

Costs & Expenses

Applicant is not seeking the recovery of costs and expenses in this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $13,704.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $13,704.50

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 Tammie L. Cummins, of Borton Petrini, LLP, ("Applicant"), Special Counsel for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Tammie L. Cummins is allowed the following fees and expenses as a professional of the Estate:
>
> Tamie L. Cummins, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $13,704.50,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

18. 17-90516-E-7 HCS-11 | **VERA JOHNSON** Thomas Hogan | **MOTION FOR COMPENSATION FOR GARY FARRAR, CHAPTER 7 TRUSTEE(S)** 4-8-20 [145]

Final Ruling: No appearance at the May 14, 2020 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, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gary R. Farrar, the Chapter 7 Trustee, ("Applicant") for the Estate of Vera June Johnson ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 17, 2017, through April 8, 2020.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include investigating and addressing matters related to Debtor's pending marital dissolution; investigating real property; preparing for the sale of said real property; employing special counsel for matters related to the pending dissolution; and addressing the difficulties of related to Debtor's lack of cooperation through the process. The Estate has $162,256.85 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant investigated and addressed complexities related to Debtor's pending marital dissolution; investigated real property; prepared for the sale of said real property; employed the realtor for the property; communicated extensively with counsel and the realtor regarding lack of cooperation from Debtor in selling the real property; employed a certified family law specialist to investigate and advise Trustee on matters related to the pending dissolution; negotiated with Debtor's former spouse so that Debtor would be assisted in finding a new residence so that Debtor would vacate the real property and it could be sold; and filed a motion to sell which resulted in $218,576.58 for the estate.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$5,612.84
3% of the balance of $112,256.84	$0.00
Calculated Total Compensation	**$11,362.84**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$11,362.84
Less Previously Paid	$0.00
Total First and Final Fees Requested	$11,362.84

The fees are computed on the total sales generated $228,567.62 of net monies (exclusive of these requested fees and costs).

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $11,362.84 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $162,256.85 of unencumbered monies to be administered. The Chapter 7 Trustee investigated and addressed matters related to Debtor's pending marital dissolution; investigated real property; prepared for the sale of said real property; employed realtor and special counsel specialized in family law for matters related to the pending dissolution; and addressed the difficulties of related to Debtor's lack of cooperation through the process. Applicant's efforts have resulted in a realized gross of $259,891.53 recovered for the estate. Dckt. 148.

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

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

Fees	$11,362.84
Costs and Expenses	$1,120.03

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gary R. Farrar, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary R. Farrar is allowed the following fees and expenses as the Trustee for the Estate:
>
> Gary R. Farrar, the Chapter 7 Trustee
>
> Fees in the amount of $11,362.84
> Expenses in the amount of $1,120.03,
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

19. 17-90516-E-7 HCS-9 | **VERA JOHNSON** Thomas Hogan | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF RYAN, CHRISTIE, QUINN & HORN, LLP FOR PAUL E. QUINN, ACCOUNTANT(S)** **4-8-20 [133]**

Final Ruling: No appearance at the May 14, 2020 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, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Ryan, Christie, Quinn & Horn, LLP, the Accountant ("Applicant") for Gary R. Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 12, 2019, through February 19, 2020. The order of the court approving employment of Applicant was entered on September 15, 2019. Dckt. 60. Applicant requests fees in the amount of $475.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include analyzing the tax implications of the sale of real property. The Estate has $228,000.00 of unencumbered monies to be administered as of the filing of the application. 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.

Sale of Real Property and Potential Tax Liability: Applicant spent 1.9 hours in this category. Applicant analyzed whether a sale of real property required the Trustee to file a tax return (it did not); communicated with the Trustee; reviewed the sale of the Real Property and its accompanying closing statement; reviewed the Debtor's past tax returns; and prepared the materials for the instant 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**
Paul E. Quinn	1.90	$250.00	$475.00
	0	$0.00	$0.00
Total Fees for Period of Application			$475.00

Costs & Expenses

Applicant is not seeking recovery of costs and expenses in this application.

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 $475.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $475.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn, LLP ("Applicant"), Accountant for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Ryan, Christie, Quinn & Horn, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $475.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

20. 17-22481-E-7 SGO-1 | **WILLIAM LANDES** **Douglas Jacobs** | **CONTINUED MOTION FOR COMPENSATION FOR STEPHEN G. OPPERWALL, CREDITORS ATTORNEY(S) 3-9-20 [106]**

Final Ruling: No appearance at the May 12, 2020 Hearing is required.

Debtor's Atty: Douglas B. Jacobs

Notes:
Set by order of the court dated 4/13/20 [Dckt 126]. Order to appear for John Reger, the Chapter 7 Trustee; Michael P. Dacquisto, counsel to the Chapter 7 Trustee; Stephen Opperwall, counsel for Essex Bank; Marie Landes, the named buyer in the Buy Sell Agreement; and Brant Bordsen, counsel for Marie Landes. Oral status reports may be given at the hearing.

The hearing on the Motion has been continued to 2:00 p.m. on July 1, 2020, for a further Status Conference pursuant to a prior order of the court (Dckt. 135).

Currently, the court has stayed these proceedings by Essex Bank for prevailing party fees. The requested fees relate to a Motion to Sell Property of the Bankruptcy Estate which was heard by the prior judge and an order issued thereon.

The order approving the sale of property of the bankruptcy estate ("Sale Order," Dckt. 76) authorized the sale pursuant to 11 U.S.C. § 363(b), selling whatever interest the Bankruptcy Estate had in the property sold. The Sale Order does not provide for a sale free and clear of any asserted liens.

At the April 23, 2020 Status Conference specially set by the court, the Trustee reported that he had, upon reversal of the order authorizing the sale he returned the monies paid by the purchaser for the goods. The Trustee elected not to have the motion reset for hearing and the re-entry of an order authorizing the sale, without any confusing language from the court about whether Essex Bank has or does not have a lien (which was not ordered or determined by the court in the prior order that was reversed). The Trustee did have possession of the goods sold prior to the sale (it appearing that they were in the possession of the Buyer and Debtor) and did not require the Buyer to return the items before returning the purchase price monies.

Counsel for Essex Bank confirmed at the hearing that the Bank was asserting it had a lien on all of the remaining monies of the Bankruptcy Estate, approximately $13,000.00. Essex Bank's secured claim is stated to be in excess of $850,000.00, well in excess of the $13,000.00 of monies held by the Trustee. Essex Bank confirmed that with respect to the motion for prevailing party attorney's fees in connection with the appeal, the only source of recovery sought is from the property of the bankruptcy estate, which is asserted to be already encumbered by the $850,000.00 owed on the secured claim.

Counsel for Essex Bank and counsel for the Trustee concurred with the court staying the Motion for Prevailing Party attorney's fees pending Essex Bank enforcing its asserted lien rights.

The next steps to be taken are for Essex Bank to commence the adversary proceeding or contested matter (if the parties concur) to have the court determined the extent, validity, and priority of its asserted lien all assets of the bankruptcy estate. The court suggested that the parties may want to consider consenting to do it as a contested matter in light of it appearing that the only issues are those of law, and there not being any facts in dispute. Counsel for Essex Bank needed to review such an election for used of a contested matter and determine whether such would be of any prejudice to Essex Bank. The court noted that if Essex Bank were to elect to go to the cost and expense of commencing an adversary proceeding, based on what the parties have explained to the court, it appears that such would be resolved by summary judgment.

21. 19-90989-E-7 GC-1 | **JAMIE/MELISSA BILLMAN** | **Walter Dahl** | **MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **3-23-20 [126]**

Final Ruling: No appearance at the May 14, 2020 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2020. By the court's calculation, 52 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Jamie Benjamin Billman and Melissa Marnell Billman, Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The instant case was converted from a Chapter 11 case to a Chapter 7 case on February 18, 2020. Dckt. 80.

Fees are requested for the period December 19, 2019, through March 16, 2020. The order of the court approving employment of Applicant was entered on December 20, 2019. Dckt. 44. Applicant requests fees in the amount of $3,535.00 and costs in the amount of $226.02.

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 preparing monthly operating reports. 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.

Monthly Operating Reports: Applicant spent 8.4 hours in this category. Applicant prepared November and December 2019 monthly operating reports, including review of bankruptcy petition and schedules, communication with debtors to obtain banking records and detail deposit, disbursement and transfer information, and questions regarding unclassified transactions.

Administrative Functions: Applicant spent 1.7 hours in this category. Applicant Prepared accountant declaration and related employment documents for debtor and counsel review. Prepared first and final fee application, including description of accounting services.

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
Michael Gabrielson	10.1	$350.00	$3,535.00
	0	$0.00	$0.00
Total Fees for Period of Application			$3,535.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $226.02 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.20 per page	$101.60
Postage		$124.42
		$0.00
Total Costs Requested in Application		$226.02

In looking at the costs, Applicant states that they charge clients $0.20 a page for photocopies. Commonly, a cost of $0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is $0.20 a page in 2020.

The court reduces the photocopy charge to $0.10 a page, thus reducing costs to $175.22. This is without prejudice to Applicant documenting that the actual cost for photocopies is more than $0.10 a page and that such higher amount is reasonable. [FN.1]

FN. 1. The court recalls a case from a few years back where the attorney asserted that the $0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney $0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that $0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.

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 $3,535.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $175.22 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$3,535.00
Costs and Expenses	$175.22

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 Gabrielson & Company ("Applicant"), Accountant for Jamie Benjamin Billman and Melissa Marnell Billman, Debtor in Possession, ("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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> Gabrielson & Company, Professional employed by Debtor in Possession
>
> Fees in the amount of $3,535.00
> Expenses in the amount of $175.22,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.