

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

May 16, 2024 at 10:30 a.m.

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1. [24-90125-E-7](#)      JUDY/CLIFFORD BRANSTROM      MOTION TO COMPEL ABANDONMENT  
[SLH-1](#)                      Seth Hanson                      4-8-24 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2024. By the court’s calculation, 38 days’ notice was provided. 14 days’ notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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**The Motion to Compel Abandonment is granted.**

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

Nikki B. Farris, the Chapter 7 Trustee, filed a non-opposition on April 16, 2024.

The Motion filed by Judy Carolyn Branstrom and Clifford Marvin Branstrom (“Debtor”) requests the court to order Nikki B. Farris (“the Chapter 7 Trustee”) to abandon property commonly known as 3929 Shawnee Drive, Modesto, California 95356 (“Property”). The Property is encumbered by the lien of Newrez LLC d/b/a Shellpoint Mortgage, securing a claim of \$269,735.97. The Declaration of Judy Carolyn Branstrom has been filed in support of the Motion and values the Property at \$548,100. Decl., Docket 19 ¶ 3. Debtor has claimed an exemption of \$278,364.03 in the Property pursuant to Cal. Code Civ. Pro. § 704.730. Schedule C, Docket 1 p. 19.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

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 Compel Abandonment filed by Judy Carolyn Branstrom and Clifford Marvin Branstrom (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 3929 Shawnee Drive, Modesto, California 95356 and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”) to Judy Carolyn Branstrom and Clifford Marvin Branstrom by this order, with no further act of the Trustee required.

2. [22-90160-E-11](#)  
[CAE-1](#)

EAGLE LEDGE FOUNDATION,  
INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
5-18-22 [1]

**Item 2 thru 3**

Debtor's Atty: Dennis D. Miller, Kathleen L. DiSanto

Notes:

Continued from 4/11/24 to be conducted in conjunction with the hearing on the Motion to Sell Property. At the status conference, the court will set the deadlines for filing of post-confirmation motions.

Quarterly Report filed: 4/15/24

[UST-1] Order denying United States Trustee's Motion to Dismiss or Convert Chapter 11 filed 4/12/24 [Dckt 398]

[DDM-5] Final Order Granting Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget filed 4/19/24 [Dckt 402]

[DDM-27] Order Confirming Debtor in Possession Eagle Ledge Foundation's Amended Chapter 11 Plan filed 5/2/24 [Dckt 404]

**The Status Conference is continued to 10:30 a.m. on XXXXXXX**

**MAY 16, 2024 STATUS CONFERENCE**

On May 2, 2024, the court entered its order confirming the Chapter 11 Plan in this Bankruptcy Case. Order; Dckt. 404.

At the Status Conference, XXXXXXX

3. [22-90160-E-11](#)      **EAGLE LEDGE FOUNDATION,**      **MOTION TO SELL AND/OR MOTION TO**  
[DDM-28](#)                      **INC.**    **PAY**  
    **Kathleen DiSanto**    **4-10-24 [382]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, attorneys of record who have appeared in the case, 20 largest creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on April 10, 2024. By the court’s calculation, 36 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 / for Allowance of Broker's 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 to Sell Property is granted and the Motion for Allowance of Broker’s Fees is granted.**

The Bankruptcy Code permits Eagle Ledge Foundation, Inc., the Debtor in Possession, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 4130-4142 Indiana Avenue, Chicago, Illinois 60653 (“Property”). As provided in the Local Bankruptcy Rules, Movant has joined the Motion for Authorization to Sell with a Motion for Allowance of Broker’s Fees. L.B.R. 9014-1(d)(5)

The proposed purchaser of the Property is The Bright Star Community Development Corp. (“Buyer”), and the terms of the sale are:

- A. Purchase price of \$750,000, subject to overbid;

- B. Debtor's real estate broker, Keller Williams Preferred Realty, will receive 5% commission;
- C. The Property needs significant repairs and has been the subject of a code violation action. Buyer is aware of the condition and is taking the Indiana Avenue Property subject to the code violations.

Debtor in Possession submits the Declarations of Whitman H. Brisky (Docket 384), Chester Reid (Docket 385), Emiko Pope (Docket 386), and Richard Baker (Docket 387) in support of the Motion.

Mr. Whitman, special counsel for Debtor in Possession, testifies as to the facts of the foreclosure process regarding the Property, informing the court of how long and difficult the process was. Debtor in Possession finally obtained possession of the Property on March 10, 2023. Decl., Docket 384 p. 3: 4-5.

Mr. Reid, the president and chairman of Debtor in Possession, also testifies as to the nature of the foreclosure proceedings regarding the Property as well as how the current offer from Buyer came about. Mr Reid has two exhibits attached to his Declaration, including a copy of the commercial sales contract and a subsequent rider to the sales contract. Decl., Docket 385.

Emiko Pope, real estate broker with Keller Williams, the firm who sold the Property, testifies as to her role in selling the Property. As the Property is a church structure, the sale was a little unusual as the market is smaller and more selective. Decl., Docket 386 ¶ 4. Ms. Pope describes how she went about marketing and ultimately selling the Property. *Id.* at ¶¶ 6-8.

Richard Baker, special counsel for Debtor in Possession and also real estate counsel for the brokers here, testifies as to his specialty in representing religious organizations. Decl., Docket 387 ¶ 2. Mr. Baker also testifies as to his role in negotiating with counsel for Buyer. *Id.* at ¶ 4. Mr. Baker informs the court of the large tax issues outstanding regarding the Property. *Id.* at ¶ 5.

According to Mr. Baker, the Property consists of two parcels: 20-03-114-023-0000 ("Parcel 023") and 20-03-114-033-0000 ("Parcel 033"). *Id.* Apparently third parties purchased unpaid tax liens in the Property in 2019. *Id.* at ¶ 6. Tax liens are purchased as an investment because when the property owner pays the tax liens, interest is also paid. The third party purchaser, Landex Tax, LLC, acquired several years' property tax liens on Parcel 033. *Id.* at ¶ 7. Mr. Baker later learned Landex Tax, LLC sold its interest in the tax liens to Wheeler Financial, Inc. *Id.* The total owed on these tax liens over the years has grown to \$286,915. *Id.* at ¶ 10.

Mr. Baker informs the court he seriously considered pursuing a 11 U.S.C. § 363(f)(3) and (4) sale free and clear of liens, reducing or eliminating liability on tax liens as the Property was used as a church. Mr. Baker ultimately decided not to go this route because the parcels on which the structure sits may not have been exclusively for church purposes, rendering a favorable outcome uncertain. *Id.* at ¶¶ 19, 20.

### **Requested Overbid Procedures**

Debtor in Possession requests:

Any potential bidders shall qualify to bid by providing the Debtor and its counsel proof of available funds to enable a close of escrow promptly after the

conclusion of the sale hearing, and must agree to the terms and conditions of the written offer from Bright Star. The first overbid shall be seven hundred seventy-five thousand dollars (\$775,000.00), and then subsequent overbids shall proceed in increments of ten thousand dollars (\$10,000.00) until all bidders but one remain with the highest bid. Any party seeking to overbid must provide a written offer of at least \$775,000.00 and written proof of available funds in excess of the present offer, and for additional proposed bidding amount(s), to Debtor's counsel not less than seven (7) calendar days before the May 16, 2024 the sale hearing. Debtor's counsel shall then promptly confirm if the party seeking to overbid qualifies to engage in the auction the day of the Court hearing.

Mot., Docket 382 ps. 3:21-4:5.

The court finds these terms to be reasonable and adopts these bidding procedures for the Hearing.

## **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: **XXXXXXX** .

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will pay outstanding liens and recover substantial sums for the Estate. The court understands this was a long and difficult process, requiring professionals to put their heads together in dealing with a nontypical building and sale. The effort has resulted in a successful sale and a good return for the Bankruptcy Estate and other interested parties.

### **Motion for Allowance of Professional Fees**

Movant requests that court allow Keller Williams, the Real Estate Broker employed by the Debtor in Possession (Order; Dckt. 225) a real estate commission of five percent (5.0%). Based on the contract sales price of \$750,000, Movant estimates that a five percent (5%) broker's commission from the sale of the Property will equal approximately \$37,500.

The court allows and authorized the payment of a real estate commission to Keller Williams of not more than five percent (5%) from the proceeds of the sale of the Property.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the sale to proceed immediately. Mot., Docket 382 p. 2:21-23.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Eagle Ledge Foundation, Inc., the Debtor in Possession, (“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 Eagle Ledge Foundation, Inc., the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to The Bright Star Community Development Corp. (“Buyer”) or nominee, the Property commonly known as 4130-4142 Indiana Avenue, Chicago, Illinois 60653 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$750,000, on the terms and conditions set forth in the Commercial Sales Contract and Rider A to Real Estate Sale Contract, Exhibits 1 & 2, Docket 385, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Debtor in Possession is authorized to pay a real estate broker’s commission in an amount not more than five percent (5%) of the actual purchase price upon consummation of the sale. The five percent (5%) commission shall be paid to Debtor in Possession’s broker, Keller Williams Preferred Realty.

**IT IS FURTHER ORDERED** that the court authorizes and allows a real estate commission of not more than five percent (5%) of the gross sales proceeds to Keller Williams Preferred Realty, the court authorized real estate broker for the Debtor in Possession.

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

4. [24-90166-E-7](#)  
[KMT-3](#)

GRAINS OF VIRTUE  
BREWERY, LLC  
Taras Kurta

**MOTION TO EMPLOY TMC AUCTION,  
INC. AS AUCTIONEER, AUTHORIZING  
SALE OF PROPERTY AT PUBLIC  
AUCTION AND AUTHORIZING PAYMENT  
OF AUCTIONEER FEES AND EXPENSES  
5-9-24 [24]**

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on May 9, 2024. By the court's calculation, 7 days' notice was provided. The court set the hearing for May 16, 2024. Dckt. 32.

The Motion to Employ Auctioneer and for Authorization of Auctioneer's Fees and Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Motion to Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer's Fees and Expenses are granted.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(3) and Bankruptcy Code Sections 327, 328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Grains of virtue Brewery, LLC ("Debtor"):

1 - 7 bbl boil kettle	\$0.00	Comparable sale	\$5,500.00
1 - 10 bbl plate chiller	\$0.00	Comparable sale	\$1,000.00
3 - 1/2 bbl yeast brinks	\$0.00	Comparable sale	\$300.00
8 - Tables	\$0.00	Comparable sale	\$400.00
65 - Chairs	\$0.00	Comparable sale	\$975.00
1 - Frame harness for keg washer	\$0.00	Comparable sale	\$50.00
2 - Tankless water heaters	\$0.00	Comparable sale	\$2,000.00
1 - Water treatment unit	\$0.00	Comparable sale	\$2,000.00
1 - Slushy machine	\$0.00	Comparable sale	\$1,200.00
4 - Computer monitors	\$0.00	Comparable sale	\$80.00
1 - Air compressor	\$0.00	Comparable sale	\$80.00
1 - Workbench	\$0.00	Comparable sale	\$100.00
1 - Pallet jack	\$0.00	Comparable sale	\$100.00
1 - Pump	\$0.00	Comparable sale	\$750.00
Taproom cooler	\$0.00	Comparable sale	\$1,500.00
Backroom cooler	\$0.00	Comparable sale	\$3,000.00
Glassware miscellaneous	\$0.00	Comparable sale	\$100.00
Miscellaneous parts	\$0.00		\$1,000.00

(“Personal Property”). Mot., Docket 24 p. 2. The Personal Property is listed in Schedule A / B filed by Debtor, at line 50 on pages 2 through 3. Docket 1. Trustee argues that Auctioneer’s appointment and retention is necessary to facilitate a liquidation of the Personal Property and produce the highest and best return to the estate. Mot., Docket 24 at p. 4:5.

The essential terms of the Employment Agreement are as follows:

(a) A commission of twenty percent (20%) will be charged to the estate and will be deducted from the gross sale proceeds. Typically, the auctioneer charges a buyer's premium of ten percent (10%) (i.e., for a total of 20% with the commission), but is charging the full amount as a commission.

(b) The Auctioneer will be entitled to reimbursement of any expenses incurred in preparing for and conducting the auction in an amount not to exceed \$4,350.

(c) Within 30 business days of the auction, the Auctioneer will remit payment to the Trustee the net sale proceeds.

*Id.* at ps. 3:21-4:2.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction is a full-service auction company providing auctions and accelerated marketing services, as well as liquidations of business and other financial assets for corporations, financial institutions, trustees, individuals, and estates. The Auctioneer has extensive experience in assisting bankruptcy trustees similar to the Trustee. Decl., Docket 29 ¶ 2. Mr. Papp 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. *Id.* at ¶¶ 7-9.

**DISCUSSION**  
**Motion to Employ and**  
**Authorization to Sell**

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 28. Approval of the commission 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.

Auctioneer is authorized to sell the items of Personal Property listed in Schedule A / B filed by Debtor, at line 50 on pages 2 through 3. Docket 1.

**Motion for Authorization**  
**of Fees and Expenses**

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)).

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)).

Here, Trustee has estimated that a twenty percent broker’s commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed \$4,350 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed \$4,350, in connection with the auction.

The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not anticipate opposition to the Motion, and Trustee requests the sale be allowed to move forward as soon as possible. Mot., Docket 24 p. 5:13-15.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective April 9, 2024, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 28.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the following items of personal Property at the auction as listed in Schedule A / B filed by Debtor, at line 50:

1 - 7 bbl boil kettle	\$0.00	Comparable sale	\$5,500.00
1 - 10 bbl plate chiller	\$0.00	Comparable sale	\$1,000.00
3 - 1/2 bbl yeast brinks	\$0.00	Comparable sale	\$300.00
8 - Tables	\$0.00	Comparable sale	\$400.00
65 - Chairs	\$0.00	Comparable sale	\$975.00
1 - Frame harness for keg washer	\$0.00	Comparable sale	\$50.00
2 - Tankless water heaters	\$0.00	Comparable sale	\$2,000.00
1 - Water treatment unit	\$0.00	Comparable sale	\$2,000.00
1 - Slushy machine	\$0.00	Comparable sale	\$1,200.00
4 - Computer monitors	\$0.00	Comparable sale	\$80.00
1 - Air compressor	\$0.00	Comparable sale	\$80.00
1 - Workbench	\$0.00	Comparable sale	\$100.00
1 - Pallet jack	\$0.00	Comparable sale	\$100.00
1 - Pump	\$0.00	Comparable sale	\$750.00
Taproom cooler	\$0.00	Comparable sale	\$1,500.00
Backroom cooler	\$0.00	Comparable sale	\$3,000.00
Glassware miscellaneous	\$0.00	Comparable sale	\$100.00
Miscellaneous parts	\$0.00		\$1,000.00

**IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and expenses not to exceed \$4,350.00 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

5. [24-90166-E-7](#)  
[KMT-2](#)

**GRAINS OF VIRTUE  
BREWERY, LLC  
Taras Kurta**

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
SOUTH STAR PM, INC. O.S.T.  
5-9-24 [15]**

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors and parties in interest, and Office of the United States Trustee on May 9, 2024. By the court’s calculation, 7 days’ notice was provided. The court set the hearing for May 16, 2024. Dckt. 22.

The Motion for Approval of Compromise / to Reject Lease was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

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**The Motion for Approval of Compromise / to Reject Lease is granted.**

Nikki B. Farris, the Chapter 7 Trustee, (“Movant,” “Trustee”) requests that the court approve a compromise and settle competing claims and defenses with South Star PM, Inc. (“Landlord”). Landlord owns the commercial real property commonly known as 832 N. Yosemite Ave., Oakdale, CA 95361 (“Leased Property”). Estate of Grains of virtue Brewery, LLC (“Debtor”) leased and operated its business out of the Leased Property. Debtor has Scheduled the lease on its Schedule G (“Lease”). Docket 1 p. 19 line 2.2.

The claims and disputes to be resolved by the proposed settlement include requesting authorization for rejecting the lease, allowing Landlord to keep Debtor's security deposit of \$6,500 ("Lease Deposit"), and limiting any administrative claims Landlord may have against the bankruptcy Estate.

Movant and Landlord 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 Stipulated Agreement filed as Exhibit A in support of the Motion, Dckt. 17):

a. Rejection and Termination of Lease. The unexpired lease ("Lease") for the commercial space located at 832 N. Yosemite Ave., Oakdale, CA 95361 ("Leased Property") shall be deemed rejected, effective June 3, 2024, pursuant to 11 U.S.C. section 365 and terminated, and the Leased Property shall be deemed surrendered to the Landlord or its designated agent no later than June 3, 2024.

b. Lease Deposit and Administrative Claim. The Trustee shall disclaim any interest in a deposit for the Leased Property in the amount of \$6,500.00, any automatic stay shall terminate as it relates to the Deposit, and the Landlord agrees, as to the Debtor's bankruptcy estate only, that any administrative claim for past due rent that may be asserted for the time period of the petition date through June 3, 2024 shall be deemed waived and/or satisfied.

c. General Unsecured Claim. To the extent authorized under applicable law, the Landlord shall be authorized to file a proof of claim asserting only a general unsecured claim against the Debtor's bankruptcy estate for any prepetition debt owed and/or on account of the rejection of the Lease for the Leased Property. However, the Landlord is not required to make any such claim. In addition, any right of the Trustee to object to any proof of claim, if necessary, shall be preserved.

(i) Timing of Filing of Proof of Claim. Any proof of claim to be filed by the Landlord must be filed within sixty (60) days of entry of the order approving this Stipulation to be deemed timely.

d. Access to the Leased Property. The Trustee shall provide access to the Leased Property to allow the Landlord to market the property.

e. Removal of Estate Assets. The Trustee shall cause any bankruptcy estate property in which the estate intends on auctioning and not abandoning to be removed from the Leased Property no later than June 3, 2024. Subject to applicable law, if any bankruptcy estate property remains at the Leased Property upon the Trustee's surrender, the Landlord may discard or otherwise dispose of such property without further notice.

f. Relief from Stay. The Landlord shall have relief from stay as against the bankruptcy estate under 11 U.S.C. section 362 as of June 3, 2024 to exercise any of its rights and remedies against the Leased Property available under state and/or bankruptcy law, including proceedings to recover possession of the Leased Property and/or to dispose of any personal property owned by the estate and remaining at the Leased Property upon surrender on June 3, 2024.

## **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).

Discussed below, Movant argues that the four factors have been met.

### **Probability of Success**

Movant argues this factor weighs in favor of approving the compromise as Landlord may be entitled to an administrative claim on account of the Leased Property since the Personal Property is stored at the property. At a minimum, the Landlord contends that the estate has no interest in the Lease Deposit and that it may keep the Lease Deposit on account of the rent owed. While the Trustee could litigate the amount of and the entitlement to an administrative claim, and whether the Landlord may keep the Lease Deposit, the probability of success is ultimately unknown. Mot., Docket 15 p. 4:9-14.

### **Difficulties in Collection**

Movant argues this factor is neutral as the primary dispute stems from the Landlord's entitlement to an administrative claim and issues related to the Lease Deposit. *Id.* at p. 4:16-17.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues this factor weighs in favor of approving the compromise as the estate would incur unnecessary expense litigating the dispute. The cost of litigation would significantly exceed any benefit the estate would receive in light of the terms of the Agreement and could limit the return to the estate from the potential assets currently available. Indeed, the estate is only relinquishing its claims to the Lease Deposit and will not be responsible for any amounts to the Landlord for any administrative rent claim. Given the amount of the monthly rent, the administrative claim could be much higher than the deposit. Further,

litigation would be inconvenient and time consuming. The law favors compromise and not litigation for its own sake. *In re Blair* (9th Cir. 1976) 538 F. 2d 849, 851. Mot., Docket 14 p. 4:19-26.

### **Paramount Interest of Creditors**

Finally, Movant argues this factor heavily weighs in favor of the court authorizing the compromise. By entering into the Agreement, the Trustee is ensuring that any administrative claim the Landlord may assert for rent does not diminish the potential return to the estate from the estate's assets. Moreover, the Trustee is avoiding unnecessary litigation over the administrative claim and the Lease Deposit that could further reduce any return. The Agreement is in the best interest of creditors. *Id.* at ps. 4:28-5:4.

### **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 Movant is able to avoid unnecessary expense and delay in prosecuting litigation with an uncertain outcome. Movant is also insulating the Estate from administrative claims that Landlord may assert.

### **Rejecting the Lease**

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Here, Movant has demonstrated several sound business judgment reasons for rejecting Debtor's Lease of the Leased Property. Movant states:

The Trustee has determined that any interest the estate may have in the Lease will have no value beyond June 3, 2024. Moreover, the Trustee entered into the Agreement which provides for the Lease to be rejected. The Agreement is of significant benefit to the estate as it limits any potential administrative claim by the Landlord and preserves other assets of the estate. Finally, this is a Chapter 7 case, the Trustee is not operating the business of the Debtor, and the Debtor has ceased operations.

Mot., Docket 15 p. 5:13-18.

### **Relief From the Automatic Stay**

Under the terms of the Stipulation it provides that the Landlord:

[s]hall have relief from the stay . . . as of June 3, 2024 to exercise any of its rights and remedies against the Leased Property: . . .including proceeding to recover possession of the Leased Property and/or to dispose of any Personal Property owned by the estate and remaining at the Leased Property upon surrender on June 3, 2024.

Exhibit A, Stipulated Agreement ¶ 6; Dckt. 17.

While saying that the relief from stay shall occur, it is not clear whether such relief is to be part of the order granting this Motion, a supplemental order issued under this Docket Control Number, or a separate ex-parte motion for relief from the stay.

At the hearing, **XXXXXXX**

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject Debtor's Lease of the Leased Property.

Therefore, the Motion for Approval of Compromise and to Reject the Lease is granted.

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

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

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

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and South Star PM, Inc. ("Landlord") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulated Agreement filed as Exhibit A in support of the Motion, Dckt. 17.

**IT IS FURTHER ORDERED** that the Motion to Reject Lease is granted, and Movant is authorized to reject Debtor's Lease of the commercial real property commonly known as 832 N. Yosemite Ave., Oakdale, CA 95361 ("Leased Property"), listed on Schedule G at Docket 1, page 19 line 2.2.

**IT IS FURTHER ORDERED** that .....[Relief From Stay Text]

The rejection of the above lease is effective on June 3, 2024, with no further act of the Chapter 7 Trustee required.

# FINAL RULINGS

6. [24-90105-E-7](#)

FRANCISCO/ANITA PENA  
Mark O'Toole

TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
4-2-24 [18]

Items 6 thru 8

**Final Ruling:** No appearance at the May 16, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties in interest, and Office of the United States Trustee on April 2, 2024. By the court's calculation, 44 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). 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 respondent 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 Dismiss is granted, and the case is dismissed.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Francisco Jesus Pena and Anita Pena ("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 8:00 a.m. on May 28, 2024. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

**DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor has not filed an opposition to this Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Nikki B. Farris ("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 granted, and the case is dismissed.

**Final Ruling:** No appearance at the May 16, 2024 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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 17, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Objection to the Clerk's Notice of Intent to Close Debtor's Case Without a Discharge 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 Objection to the Clerk's Notice of Intent to Close Debtor's Case Without a Discharge is dismissed without prejudice as Moot, this Bankruptcy Case being dismissed by a separate order of the court.**

On March 31, 2024, the Clerk of the Court's office issued a Notice of Intent to Close Case Without Entry of Discharge. Docket 13. The Notice provided that unless Opposition and a hearing on the matter is set within 30 days, the case will be closed without an entry of discharge. Francisco Jesus Pena and Anita Pena ("Debtor") filed this Objection on April 17, 2024, which was within the 30-day period.

Debtor explains that this case was filed slightly too early due to attorney error. Debtor explains:

Debtors' attorney mistakenly filed the present Chapter 7 before the date it was eligible to be filed. The present case was filed on 2/28/24 (See Exhibit A). However, the prior case had been filed on 4/22/16 (See Exhibit B). The eligibility date for debtors to file a new chapter 7 case would be on 4/23/24. The debtors can refile their case if the present filing is approved to be withdrawn.

Mot., Docket 22 p. 3:3-9. Debtor's attorney explains that his office manager, Kathy Alcaraz, did not spot the April 16, 2016 filing because Debtor Anita Pena's social security number did not come up in the case search as her social security number was incorrectly listed in the previous case. *Id.* at p. 3:15-23. Ms. Alcaraz submitted a Declaration testifying as much. Decl., Docket 25.

The court finds that Debtor would be eligible for a discharge in a Chapter 7 case that was filed on or after April 23, 2024, having received a discharge in their previous case filed on April 22, 2016. *See* 11 U.S.C. § 727(a)(8). The court appreciates that when working with human beings, mistakes happen. All that matters is how the parties seek to address the mistake after the fact.

Here, Debtor's attorney diligently filed an Objection and clearly explained how and why the case was prematurely filed. While providing an explanation of what happened, Debtor does not provide the court with a legal basis for overriding the eight year requirements of 11 U.S.C. § 727(a)(8).

However, the court can address any concerns of Debtor with respect to there not being a discharge entered in this case. Pursuant to the Motion to Dismiss filed by the Chapter 7 Trustee, the is dismissing this case. Debtor can then file a new Chapter 7 case that is outside the eight year filing requirement for obtaining a discharge in a 2024 filed bankruptcy case.

Therefore, the court dismisses without prejudice the Objection as moot, this Bankruptcy Case being dismissed by order of the court..

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 Objection to the Clerk's Notice of Intent to Close Debtor's Case Without a Discharge filed by Francisco Jesus Pena and Anita Pena ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to the Clerk's Notice of Intent to Close Debtor's Case Without a Discharge is dismissed without prejudice as Moot, this Bankruptcy Case being dismissed by a separate order of the court.

**Final Ruling:** No appearance at the May 16, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 17, 2024. By the court's calculation, 29 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). 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 Dismiss is granted, and the case is dismissed.**

The Chapter 7 Debtor, Francisco Jesus Pena and Anita Pena ("Debtor"), seeks dismissal of their own case on the grounds that they inadvertently filed their case prematurely. Debtor explains:

Debtors' attorney mistakenly filed the present Chapter 7 before the date it was eligible to be filed. The present case was filed on 2/28/24 (See Exhibit A). However, the prior case had been filed on 4/22/16 (See Exhibit B). The eligibility date for debtors to file a new chapter 7 case would be on 4/23/24. The debtors can refile their case if the present filing is approved to be withdrawn.

Mot., Docket 28 p. 3:3-9. Debtor's attorney explains that his office manager, Kathy Alcaraz, did not spot the April 16, 2016 filing because Debtor Anita Pena's social security number did not come up in the case search as her social security number was incorrectly listed in the previous case. *Id.* at p. 3:15-23. Ms. Alcaraz submitted a Declaration testifying as much. Decl., Docket 31.

11 U.S.C. § 707(a) provides for dismissal of a case under Chapter 7, stating:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

Collier's Treatise on Bankruptcy explains that:

When the debtor seeks dismissal of a voluntary case, the relevance of the "cause" requirement has been questioned. Most cases, however, seem to require some cause for dismissal even in this situation, although the cause may simply be that dismissal is in the best interest of the debtor and not prejudicial to creditors. The debtor's best interest lies generally in securing an effective fresh start upon discharge and in the reduction of administrative expenses, leaving resources to work out debts; for creditors, if delay is said to have prejudiced them, the court must determine whether, as section 707(a) provides, the delay has been unreasonable.

6 COLLIER ON BANKRUPTCY ¶ 707.03[c][3].

Here, the court finds Debtor's attorney's mistake in prematurely filing to be a justifiable "for cause" reason to dismiss the case. There has been no opposition presented by any creditors or parties in interest. Therefore, the Motion is granted and the case is dismissed.

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 Dismiss filed by Francisco Jesus Pena and Anita Pena ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

9. [10-94523-E-7](#)  
[HCS-3](#)

ROGER/MARY PITTO  
David Foyil

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF HERUM, CRABTREE,  
SUNTAG, LLP FOR DANA A. SUNTAG,  
TRUSTEES ATTORNEY(S)  
4-9-24 [78]

Item 9 thru 10

**Final Ruling: No appearance at the May 16, 2024 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice<sup>7</sup> Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 9, 2024. By the court’s calculation, 37 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). The defaults of the non-responding parties and other parties in interest are entered.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

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

Herum\Crabtree\Suntag, the Attorney (“Applicant”) for Gary 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 recovering money related to a products liability claim on behalf of the Chapter 7 Estate.

Ms. Loris Bakken was Client’s original general counsel. Ms. Bakken had filed a motion to employ special counsel, Brady Law Group, on December 30, 2021, to prosecute the products liability claim. Docket 47. The court granted this motion on January 3, 2022.

Client filed a motion to employ Applicant as his new general counsel, substituting Ms. Bakken, on February 4, 2022. The court granted this motion on February 8, 2022. Dockets 59, 60. Applicant requests fees in the amount of \$10,156.00 and costs in the amount of \$108.42.

## 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 recovering significant sums for the Bankruptcy Estate in prosecuting the products liability action. The Estate has \$237,000 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 11.6 hours on general case administration. The time included reviewing the Debtor’s petition and schedules and amended schedules and the nature of the case, and preparing Applicant’s employment application and substitution of attorney, the instant application for compensation, and the Trustee’s application for compensation. Mot., Docket 78 p. 3:19-22.

Turnover of funds: Applicant spent 5.4 hours in this category. Applicant encountered difficulty in recovering funds from Brady Law Group, special counsel. Special counsel in the products liability case originally disbursed the entire settlement amount of \$237,000 without bankruptcy approval and without paying Applicant. In March, 2024, after some negotiation, Applicant was able to recover the entire sum from Brady Law Group. *Id.* at ps. 3:24-5:11.

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

<b>Task</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Turnover of Funds	5.4	\$260-\$485	\$2,542.00
General Case Administration	18.2 <sup>FN.1</sup>	\$260-\$485	\$7,614.00
<b>Total Fees for Period of Application</b>			<b>\$10,156.00</b>

FN.1. This time amount has been corrected by the court based on the review of Exhibit A, Dckt. 81, as discussed below.

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Looking at the Motion; p. 3:22, Dckt. 78; and the billing records; Exhibit A, Dckt. 18; Applicant has total the General Case Administration time to be 11.6 hours. However, when the court computes that average per hour fee for \$7,614.00 billing over 11.6 hours, that comes out to be \$656.38 per hour.

With Applicant having billing rates of \$260 and \$485, such an average would be impossible.

In reviewing the line by line billings for General Case Administration tasks as listed in Exhibit A, the actual time listed totals 18.2 hours worked, not 11.6 hours worked as Applicant has stated. With 18.2 hours actually worked, the average hourly rate is \$418 per hour.

It appears that a clerical mathematical error was made in totaling the time billed.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$108.42 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage	-----	\$47.75
Copies	\$0.10	\$60.67
<b>Total Costs Requested in Application</b>		<b>\$108.42</b>

**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 \$10,156.00 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 \$108.42 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	\$10,156.00
Costs and Expenses	\$108.42

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, the Attorney (“Applicant”) for Gary 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 \$10,156.00  
Expenses in the amount of \$108.42,

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

**Final Ruling:** No appearance at the May 16, 2024 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2024. By the court’s calculation, 37 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 Trustee 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 Trustee Fees is granted.**

Gary R. Farrar, the Chapter 7 Trustee, (“Applicant”) for the Estate of Roger R. Pitto and Mary Pitto, makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 2021, through March 2024 related to recovering sums in the amount of \$237,000 for the Bankruptcy Estate.

#### STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

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

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

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

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

### **Benefit to the Estate**

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

Here, the Estate has \$237,000 of unencumbered monies to be administered as of the filing of the application. The Trustee’s activities include employment of legal professionals, review of the debtors’

schedules, review of the debtors' claim, review of filed claims, litigation follow up, records maintenance, distribution matters, preparation of TFR and TDR reports and case closure. Farrar Decl., Docket 75 ¶ 19. The court finds the services were beneficial to the Estate and were reasonable.

**FEES& COSTS REQUESTED**

**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	\$9,350
3% of the balance of \$0	\$0
<b>Calculated Total Compensation</b>	<b>\$15,100</b>
<b>Total First and Final Fees Requested</b>	<b>\$15,100</b>

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$52.45 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
TDR 1 1	\$7.85	\$7.85
Mailouts	\$1.65	\$39.60
Five Part File 1 1	\$5.00	\$5.00
<b>Total Costs Requested in Application</b>		<b>\$52.45</b>

**FEES AND COSTS & EXPENSES 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 \$15,100 are approved pursuant to 11 U.S.C. § 330 and 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.

First and Final Costs in the amount of \$52.45 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.

This case required meaningful 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	\$15,100
Costs and Expenses	\$52.45

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 trustee of the Estate:

Gary R. Farrar, the Chapter 7 Trustee

Fees in the amount of \$15,100  
Expenses in the amount of \$52.45,

**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.

11. [10-92283-E-7](#)  
[BLF-5](#)

SERGIO/GENOVEVA MONTOYA  
Pro Se

MOTION FOR COMPENSATION FOR  
LORIS L. BAKKEN, TRUSTEES  
ATTORNEY(S)  
4-2-24 [65]

**Final Ruling:** No appearance at the May 16, 2024 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2024. By the court’s calculation, 44 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.**

Loris L. Bakken of the Bakken Law Firm, 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. Applicant is seeking a reduced amount of fees, requesting \$11,560 where \$12,880 was actually earned.

Fees are requested for the period February 2, 2023, through May 16, 2024. The order of the court approving employment of Applicant was entered on February 10, 2023, effective February 2, 2023. Dckt. 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 administering the case, coordinating with special counsel to prosecute a personal injury claim on behalf of the Debtor and the Estate, and ultimately assisting in recovering substantial sums for the Estate. The Estate has \$338,441.42, which will be reduced to \$172,614.25 after payment of special counsel in this case, 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 3.3 hours in this category. Applicant prepared her fee agreement, fee application, and employment application. Mot., Docket 65 p. 2:25-28.

Employment of Special Litigation Counsel: Applicant spent 9.6 hours in this category. Applicant coordinated with special counsel regarding the status and value of the personal injury lawsuit as Debtor did not list this potential claim or lawsuit on their schedules. Applicant eventually gained court approval for special counsel to represent the Estate and Debtor. *Id.* at p. 3:1-25.

Settlement and Motion to Compromise: Applicant spent 19.3 hours in this category. Applicant worked with special counsel regarding the terms of the settlement and the relevant arguments. Applicant prepared the Motion to Compromise and reached an agreement with defense counsel in the personal injury lawsuit regarding appropriate language to be include din the release. *Id.* at ps. 3:26-4:11.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Lorris L. Bakken, Attorney	32.2	\$400.00	\$12,880.00
<b>Total Fees for Period of Application</b>			\$12,880.00

However, Applicant is reducing her fees requested to \$11,560, not billing for general case administration tasks.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$112.34 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Copying	\$0.10	\$25.80
Postage	-----	\$86.54
<b>Total Costs Requested in Application</b>		<b>\$112.34</b>

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates at a reduced rate are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$11,560 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 \$112.34 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 / Debtor in Possession / Plan Administrator under the confirmed plan] is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$11,560
Costs and Expenses	\$112.34

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 Loris L. Bakken of the Bakken Law Firm (“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 Loris L. Bakken of the Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken of the Bakken Law Firm, Professional employed by [the Chapter 7 Trustee]

Fees in the amount of \$11,560

Expenses in the amount of \$112.34,

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