

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 3, 2021 at 10:30 a.m.

1. [21-90181-E-7](#)
[LRR-1](#)

HARRY BOURASSA
Len ReidReynoso

MOTION TO COMPEL ABANDONMENT
4-28-21 [9]

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 Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2021. By the court's calculation, 35 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).

The Motion filed by Harry J. Bourassa Jr. (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property commonly known as Equiptech Services, of which Debtor is one-half partner, with the following assets: vehicle, utility trailer, trade tools, equipment and material associated with the business (“Property”). The Declaration of Harry J. Bourassa, Jr. has been filed in support of the Motion declaring that Equiptech is a business of installing commercial washer and dryers and related equipment. Declaration, Dckt. 11. Further, Debtor testifies that the assets have been listed by Debtor and exempted and have no equity for the benefit. *Id.*

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 Harry J. Bourassa, Jr. (“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 Equiptech Services, of which Debtor is one-half partner, with the following assets: vehicle, utility trailer, trade tools, equipment and material associated with the business and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Sheri L. Carello (“Trustee”) to Harry J. Bourassa, Jr. by this order, with no further act of the Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 20, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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, -----.

<p>The Motion to Abandon is granted.</p>

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

The Motion filed by Gary Farrar ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as:

Parcel One: Lots 2, 6, 7, 14, 15, 16, 17, 18, 20, 21, 22, 25, 28, 31, 34, 36, 41, 44, 45, 46, and 47 as shown on that certain map entitled, "Final Map of Gold Strike Heights, Unit 1, Tract 91-524," filed in the office of the recorder of the County of Calaveras, State of California on July 13, 2001 in Book 7 of Subdivision Maps, Page 62, Calaveras County Records.

Parcel Two: A Non-Exclusive Easement for road purposes and incidental rights thereto on, over, across and through all those portions designated as "Trout Drive," "Jasper Way," "Gold Strike Way," and "Gold Strike Court," as shown on that certain

map entitled, "Final Map of Gold Strike Heights, Unit 1, Tract 91-524," filed in the office of the recorder of the County of Calaveras, State of California on July 13, 2001 in Book 7 of Subdivision Maps, Page 62, Calaveras County Records. The property addresses and other common designation, if any of the real property described above is purported to be: 3, 8, 37, 54, 90, 98, 124, 132, and 145 Jasper Way; 41, 59, 64, 72, 79, 91, 109, and 123 Gold Strike Way; 6 and 12 Gold Strike Ct.; 19 and 49 Trout Dr., San Andreas, CA 95249.

("Property"). The Property is encumbered by the liens of Creditors Carol L. Manly, surviving Trustee of the Manly Living Trust, and Mark Weiner securing claims totaling \$3,118,957.66. According to the Motion, Debtor has valued the Property at \$420,000.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Gary 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 Compel Abandonment is granted, and the Property identified as:

Parcel One: Lots 2, 6, 7, 14, 15, 16, 17, 18, 20, 21, 22, 25, 28, 31, 34, 36, 41, 44, 45, 46, and 47 as shown on that certain map entitled, "Final Map of Gold Strike Heights, Unit 1, Tract 91-524," filed in the office of the recorder of the County of Calaveras, State of California on July 13, 2001 in Book 7 of Subdivision Maps, Page 62, Calaveras County Records.

Parcel Two: A Non-Exclusive Easement for road purposes and incidental rights thereto on, over, across and through all those portions designated as "Trout Drive," "Jasper Way," "Gold Strike Way," and "Gold Strike Court," as shown on that certain map entitled, "Final Map of Gold Strike Heights, Unit 1, Tract 91-524," filed in the office of the recorder of the County of Calaveras, State of California on July 13, 2001 in Book 7 of Subdivision Maps, Page 62, Calaveras County Records. The property addresses and other common designation, if any of the real property described above is purported to be: 3, 8, 37, 54, 90, 98, 124, 132, and 145 Jasper Way; 41, 59, 64, 72, 79, 91, 109, and 123 Gold Strike Way;

6 and 12 Gold Strike Ct.; 19 and 49 Trout Dr., San Andreas, CA
95249.

is abandoned to Gold Strike Heights Homeowners Association by this order, with no
further act of the Chapter 7 Trustee required.

3. [20-90435](#)-E-11
[RAC-6](#)
3 thru 7

CHARLES MACAWILE
David Johnston

MOTION FOR COMPENSATION FOR
RONALD A. CLIFFORD, TRUSTEES
ATTORNEY(S)
5-13-21 [[117](#)]

Subchapter V

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 (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 Professional Fees is granted.
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R. Clifford & Associates, the Attorney ("Applicant") for David M. Sousa, the Chapter 11 Subchapter V Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 1, 2021, through June 3, 2021. The order of the court approving employment of Applicant was entered on April 29, 2021. Dckt. 113. Applicant requests fees in the amount of \$14,074.00 and costs in the amount of \$844.80.

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 providing general case administration; communicating with various parties regarding asset analysis and recovery; communicating and preparing documents related to estate asset dispositions; meeting and communicating with creditors; reviewing payoff statements; and drafting fee and employment applications. The Estate has \$2,625,879.77 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 9.20 hours in this category. Applicant met with the Trustee regarding the dismissal or conversion of the case, reviewed the operating reports filed in the case by the Trustee, communicated with a law firm claiming to represent the Debtor without being employed in the case, communicated with counsel to creditors regarding the case exit strategy, communicated with creditors regarding payment of their claims, and drafted the motion to conditionally dismiss the case.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.20 hours in this category. Applicant communicated with the Trustee regarding the estate’s interest in the MacCru, Inc. licenses, and communicated with E. Cruz and J. Bhatia regarding the same.

Asset Dispositions: Applicant spent 7.20 hours in this category. Applicant communicated with the Trustee, E. Cruz, the escrow company, the real property broker, counsel to creditors with liens on the Property, backup bidders, and J. Bhatia regarding the closing of the sale of the Property, including the need of a certified copy of the sale order, the licenses that run with the Property, and the return of the backup bid deposits. Applicant also revised the closing documents, discussed closing issues with the Trustee, and researched the recording issues with the sale closure.

Communications with Creditors: Applicant spent 0.20 hours in this category. Applicant met and discussed claim payment timing with creditor.

Claims Administration and Objections: Applicant spent 0.20 hours in this category. Applicant reviewed secured creditor's payoff statement.

Fee/Employment Applications/Objections: Applicant spent 19.2 hours in this category. Applicant filed a substitution of counsel, employment application of RCA, the first and final fee applications of RCA, the Trustee and Blakeley LLP and all corresponding documents.

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	31.00	\$395.00	\$12,245.00
Shanon J. Slack	6.20	\$295.00	\$1,829.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$14,074.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$844.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.20	\$622.20
Postage		\$222.60
		\$0.00
Total Costs Requested in Application		\$844.80

No evidence is provided that the actual cost for copies is \$0.20 a page and that \$0.20 is the "accurately reflects the . . . expenses incurred by RCA on behalf of the Trustee." Generally the court is presented with \$0.10 as the actual cost of generating photocopies. An example of an attorney creating a substantial profit center is demonstrated by a fee application presented to the court in which the attorney swore that his out of pocket cost for copies was \$0.25 a page. It turned out that the attorney did pay \$0.25

to the “independent contractor,” who was the attorney’s spouse, who would come into the attorney’s office, use the attorney’s copy machine and paper, and push the copy button and “charge” the attorney \$0.25 a page. The court did not allow a recovery of expense to be a profit generator for that attorney.

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 \$14,074.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of \$533.70, the court reducing the allowed photo copy expenses to \$311.10, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

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

Fees	\$14,074.00
Costs and Expenses	\$ 533.70

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 R. Clifford & Associates (“Applicant”), Attorney for David M. Sousa, the Chapter 11 Subchapter V 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 R. Clifford & Associates is allowed the following fees and expenses as a professional of the Estate:

R. Clifford & Associates, Professional employed by the Chapter 11 Subchapter V Trustee

Fees in the amount of \$14,074.00
Expenses in the amount of \$533.70,

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

IT IS FURTHER ORDERED that the Chapter 11 Subchapter V Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Subchapter V

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 (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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, -----

<p>The Motion for Allowance of Professional Fees is granted</p>
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David M. Sousa, the Chapter 11 Subchapter V Trustee, ("Applicant") for the Estate of Charles Collantes Macawile, Jr. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 1, 2021, through June 3, 2021. Applicant requests fees in the amount of \$59,013.00 and expenses in the amount of \$2,788.65.

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 reviewing tax documents; providing general case administration; analyzing bankruptcy estate assets; involved in the disposition of real estate; and attended meeting of creditors. The Estate has \$2,625,879.77 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.

Tax Issues: Applicant spent 0.5 hours in this category. Applicant reviewed tax returns submitted by the Debtor.

Case Administration: Applicant spent 81.90 hours in this category. Applicant discussed and reviewed the case, filed operating reports, and performed various administrative matters.

Asset Analysis: Applicant spent 4.1 hours in this category. Applicant reviewed property valuation and documentation regarding ownership of the assets of the estate.

Asset Disposition: Applicant spent 56.2 hours in this category. Applicant communicated and negotiated with counsel, buyers, and real estate broker regarding the sale referenced in the Sale Motion. Applicant traveled to the property numerous times. Applicant also reviewed and signed documents necessary for the closing of the sale referenced in the Sale Motion.

Meeting of the Creditors: Applicant spent 6.7 hours in this category. Applicant prepared for and attended the meeting of the creditors.

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
David M. Sousa	149.4	\$395.00	\$59,013.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$59,013.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,788.65 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$xxxx.xx	\$105.00
Travel		\$1,020.05
Postage		\$152.00
Court Fees/ /Filing Fees		\$1,231.60
Lock Smith		\$280.00
Total Costs Requested in Application		\$2,788.65

The application does not provide information for Applicant's photocopy expenses. In his Declaration, Applicant only states that expenses are included as part of the Application. Exhibit 2 is titled "Breakdown of Monthly Expenses" and authenticated by Applicant. It includes photocopy expenses of \$105.00 for the period of April 15, 2021 to April 30, 2021.

No copy cost per page is provided. It appears likely that these are photocopy expenses charged by Applicant's counsel, who in their fee application state that they charge \$0.20 a page, but do not state what their actual reimbursable cost is. At \$0.20 cents a page, a copy expense of \$105.00 equates to 525 pages.

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 \$59,013.00, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of \$2,711.15, the court adjusting the \$0.20 per page copy charge to \$0.10 per page, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

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

Fees	\$59,013.00,
Costs and Expenses	\$2,711.15

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 David M. Sousa, the Chapter 11 Subchapter V 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 David M. Sousa is allowed the following fees and expenses as a professional of the Estate:

David M. Sousa, the Chapter 11 Subchapter V Trustee

Fees in the amount of \$59,013.00,
Expenses in the amount of \$2,711.15,

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

IT IS FURTHER ORDERED that the Chapter 11 Subchapter V Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Subchapter V

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 (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 Professional Fees is granted.

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

Fees are requested for the period December 30, 2020, through March 31, 2021. The order of the court approving employment of Applicant was entered on January 25, 2021. Dckt. 72. Applicant requests fees in the amount of \$46,064.00 and costs in the amount of \$415.11.

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 with asset disposition and analysis; providing general case administration and advice; reviewed schedules and responded to creditor inquiries; drafted employment applications; and provided claim administration. The Estate has \$2,625,879.77 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.

Initial Pleadings : Applicant spent 0.3 hours in this category. Applicant reviewed the schedules in the case.

General Creditor Inquiries: Applicant spent 0.2 hours in this category. Applicant responded to inquiries from creditors.

Employment Applications: Applicant spent 11.4 hours in this category. Applicant drafted its own employment application, and that of the real property broker.

Executory Contracts/Leases: Applicant spent 1.10 hours in this category. Applicant discussed leases with D. Sousa and the real property broker.

Asset Analysis/Recovery: Applicant spent 0.80 hours in this category. Applicant met with the real property broker regarding overbids potential on the Property.

Asset Dispositions: Applicant spent 79.40 hours in this category. Applicant assisted the Trustee in finding the real property broker with experience with properties like the Property, researching the Debtor's purported stalking horse purchaser, assisted in marketing the Property, communicated with potential purchasers of the Property, assisted the Trustee and the broker in negotiating agreements to purchase the Property, drafted the sale documents, communicated with overbidders and their counsel, and assisted in closing the sale. The Property was ultimately sold for nearly \$1 million over what the Debtor claimed the Property could be sold for, and more than \$2.5 million more than the desktop opinion value the Trustee obtained.

Case Administration: Applicant spent 21.90 hours in this category. Applicant met with the Trustee, counsel to the Debtor, counsel to the secured creditor, and the broker to discuss the case, and other various administrative matters.

General Business Advice: Applicant spent 6.0 hours in this category. Applicant conferred with the real property broker on certain issues.

Stay Litigation: Applicant spent 0.3 hours in this category. Applicant reviewed lift stay issues.

Bankruptcy Litigation: Applicant spent 9.8 hours in this category. Applicant began researching and drafting the motion to dismiss the case.

Claims Administration and Objections: Applicant spent 5.0 hours in this category. Applicant reviewed claims filed in the case, researched interest on secured claims issues, and discussed claims with counsel to secured creditor.

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	77.7	\$395.00	\$30,691.50
Shanon J. Slack	55.9	\$275.00	\$15,372.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$46,064.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$415.11 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.20	\$179.20
Postage		\$18.91
Court Fees / Filing Fees		\$188.00
Computer Research		\$29.00

Total Costs Requested in Application	\$415.11
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No evidence is provided that the actual cost for copies is \$0.20 a page and that \$0.20 is the “accurately reflects the . . . expenses incurred by RCA on behalf of the Trustee.” Generally the court is presented with \$0.10 as the actual cost of generating photocopies. An example of an attorney creating a substantial profit center is demonstrated by a fee application presented to the court in which the attorney swore that his out of pocket cost for copies was \$0.25 a page. It turned out that the attorney did pay \$0.25 to the “independent contractor,” who was the attorney’s spouse, who would come into the attorney’s office, use the attorney’s copy machine and paper, and push the copy button and “charge” the attorney \$0.25 a page. The court did not allow a recovery of expense to be a profit generator for that attorney.

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 \$46,064 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of \$325.51, the court reducing the copy expense to \$0.10 per page, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Subchapter V Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

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

Fees	\$46,064.00
Costs and Expenses	\$325.51

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 Blakeley LLP (“Applicant”), Attorney for David M. Sousa, the Chapter 11 Subchapter V 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 Subchapter V Trustee

Fees in the amount of \$46,064.00

Expenses in the amount of \$325.51

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

IT IS FURTHER ORDERED that the Chapter 11 Subchapter V Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Subchapter V

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, creditors, parties requesting special notice, and Office of the United States Trustee on May 13, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case 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 Dismiss Case is granted, with the case being converted to one under Chapter 7.

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

- A. The case was filed on June 22, 2020.
- B. Debtor listed real property at 5412 Kiernan Avenue, Salida, California 95368 (the "Property"). On November 22, 2020, the Court removed the Debtor as the debtor in possession in this case. Subchapter V Trustee was largely placed in possession of the estate's assets to liquidate the Property.
- C. After a series of negotiations with different potential purchasers for the Property, Subchapter V Trustee filed that Motion to Sell on January 29, 2021, which proposed to sell the Property to a stalking horse bidder for the sale price of \$1,600,000, subject

to higher bids at an auction to be conducted by the Court. The Property ultimately sold for \$2,800,000, with three (3) backup bidders, which sale closed timely. The estate's share of the sale proceeds totaled \$2,625,879.77.

- D. A number of claims of the estate were paid directly through the sale proceeds. Specifically, the Subchapter V Trustee's real property broker's commission of \$84,000 was paid from the sale proceeds, as well as all outstanding real estate taxes owed to the Stanislaus County Tax Collector related to the Property in the total amount of \$16,373.79.
- E. Subchapter V Trustee also learned that MacCru, Inc., which the Debtor's schedules list as an asset of the estate, owned a license to operate the Property for the use it was built for, a nursing facility. Subchapter V Trustee believes that this information would have resulted in a higher price for the Property, and that the failure of the Debtor to provide the Subchapter V Trustee with this information could have resulted in sale proceeds much lower than what was realized. The Debtor and his wife, Evelyn Cruz, were also obstructionists in the Subchapter V Trustee's marketing and sale of the Property. Debtor and his wife added significant costs to an already complex sale
- F. Concurrently with this Motion, the Subchapter V Trustee has filed: (1) First and Final Application for Fees and Expenses of R. Clifford & Associates, requesting approval and payment of fees and expenses of \$14,918.80; (2) First and Final Application for Fees and Expenses of Blakeley LLP, requesting approval of fees and expenses of \$46,479.11; and (3) First and Final Application of David M. Sousa, requesting approval and payment of fees and expenses of \$61,801.65.
- G. The Debtor's counsel in this case is David C. Johnston. Counsel to the Subchapter V Trustee informed Mr. Johnson of this Motion, and the need to timely file a fee application. In reviewing Mr. Johnson's employment application, it appears that he is in possession of a \$2,000 pre-petition retainer. Mr. Johnston has informed counsel to the Subchapter V Trustee that he estimates his allowable fees in the case to be \$7,200, and is capping his fees at that amount. There are a total of \$130,669.56 in administrative expense claims, which total is \$128,669.56 when Mr. Johnston's pre-petition retainer is taken into account.
- H. Debtor scheduled four (4) secured claims. As Iron Oak Home Loans Inc.'s lien against the Property was released as a part of the Property's sale, Iron Oak Home Loan Inc.'s lien is now against the sale proceeds. Upon payment of the amount stated herein, Iron Oak Home Loans Inc. will have been paid in full. As provided in John S. Grill's payoff letter, upon payment of the amounts owed, he will no longer have any interest in the Debtor's residence, and will execute a conveyance regarding the Debtor's residence
- I. Debtor scheduled two (2) secured claims on behalf of Stanislaus County Tax Collector. Each relates to each of the Property and the Debtor's residence. The Stanislaus County Tax Collector filed Claims No. 9 and 10 as to real property taxes owed on the Property in the amount of \$7,522.97, and \$1,447.13. sale of the Property paid Claim No. 9 through escrow. The sole remaining claim of the Stanislaus County Tax Collector is Claim No. 10, which, again, will total \$1,749.45 in June 2021, including interest.

J. Debtor's Schedules list one (1) priority claim, which is that of the Internal Revenue Service in the amount of \$3,318.00. The Internal Revenue Service filed Claim No. 7 on August 27, 2020 in the amount of \$3,318, agreeing with the Debtor's schedules. With post-petition interest at the Federal judgment rate existing on the Petition Date, the total claim is \$3,323.35.

K. The following represents the Debtor's Unsecured Claims:

Creditor Scheduled	Allowed Claim
Golden 1 Credit Union	\$19,813.92
Home Depot Credit Services	\$11,017.73
Jefferson Capital Systems (Lowes)	\$1,479.06
Jefferson Capital Systems(Amazon)	\$1,434.10
JP Morgan (CC)	\$9,651.53
JP Morgan (LOC)	\$9,014.50
LVNV Funding, LLC	\$565.36
Totals	\$52,976.20

L. With post-petition interest at the Federal judgment rate that existed on the Petition Date, 17%, the total allowed claims of general unsecured non-priority creditors is \$52,976.20.

M. The total claims against the estate are as follows:

Claim Type	Amount of Claims
Administrative Expense Priority Claims	\$128,669.52
Secured Claims	\$1,462,515.66
Priority Claims	\$3,323.35
General Unsecured Non-Priority Claims	\$52,976.20
Total	\$1,647,484.77

N. The total claims of the estate through June 3, 2021, will be \$1,647,484.77. The total cash the Subchapter V Trustee is in possession of is \$2,625,879.77. Paying all claims in full, with interest, the amount that is available for refund to the Debtor is \$978,395.

O. The proposed conditions to dismissal of this case are as follows: (1) approval of the pending Fee Applications; (2) the distribution of the remaining cash on hand to holders of allowed claims (secured claims, administrative expense priority claims, priority claims, and general unsecured non-priority claims) in the amounts set forth *supra* by the Subchapter V Trustee; (3) the disbursement of all remaining cash after payment of all allowed claim in the case to the Debtor; (4) the dismissal of the Bankruptcy Case; (5) the affirmation of all orders issued in this Bankruptcy Case by the Court; and (6) the retention of limited jurisdiction by the Court to resolve any disputes related to the Court's orders entered in this Bankruptcy Case

- P. The conditional dismissal of a Chapter 11 case, as proposed here, allows for a more efficient and less expensive means for disposing of a Chapter 11 case while simultaneously paying creditors through bankruptcy—thereby protecting creditors—and avoiding the additional administrative expenses and delay associated with chapter 7 liquidation. Debtor did not timely propose a plan, or request an extension from this Court to file a plan. The only means by which this case may be disposed is through dismissal or conversion of the case to Chapter 7.
- Q. The requested conditional dismissal is in the best interests of the estate, the estate's creditors, and the Debtor, and is warranted pursuant to Sections 105(a), 305(a), and 1112(b) of the Bankruptcy Code.
- R. Cause exists to dismissed the case under Sections and 1112(b).
- S. Subchapter V Trustee believes dismissal of this case under the terms requested herein is in the best interest of the estate for the following three reasons. Creditors are being paid in full, in cash, with post-petition interest in short order, so there is nothing for a Chapter 7 trustee to do.
- T. Debtor is receiving a distribution of nearly \$1 million, and will be debt-free, at least as to those claims that accrued pre-petition.
- U. Conversion of the case would result in a delay in paying creditors due to the meeting of creditors, the need to file an accounting, the need to close the case, and the undertaking of any other tasks a Chapter 7 trustee would embark on in administration of the case. The John S. Grill claim is accruing interest at the rate of \$24.65 per day. The Iron Oak Home Loans Inc. claim is accruing interest, costs and attorneys' fees at a rate of no less than \$297.67 per day. The longer it takes to pay creditors, the more this case costs the Debtor. The Debtor does not dispute the claims that he has scheduled, or those that have been filed. Dismissing the matter and paying claims of creditors in short order makes the most sense.
- V. Creditors are better served by dismissal in that they will be paid in full, in cash, upon dismissal. The Debtor is served because there is no delay, and the intendent costs of those delays with the appointment of a Chapter 7 trustee. As there are no tasks to perform that would benefit creditors or the Debtor through conversion to Chapter 7, the Subchapter V Trustee submits that it is appropriate to dismiss this matter under Section 305(a) of the Bankruptcy Code.
- W. 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, Subchapter V Trustee could not effectuate the proposed conditional dismissal. The court approved a sale free and clear of liens with a distribution to secured creditors. 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).
- X. The Bankruptcy Court will retain limited jurisdiction over the conditional dismissal order and any other disputes concerning order entered during the case.

- Y. Subchapter V Trustee has cash-on-hand of \$2,625,879.77. The Subchapter V Trustee proposes the following distributions of that cash:

Payee	Amount
Iron Oak Home Loans Inc.	\$1,358,861.27
John S. Grill	\$ 101,904.94
Internal Revenue Service	\$ 3,323.35
Golden 1 Credit Union	\$ 19,813.92
Home Depot Credit Services	\$ 11,017.73
Jefferson Capital Systems (Lowes)	\$ 1,479.06
Jefferson Capital Systems (Amazon)	\$ 1,434.10
JP Morgan (Credit Card)	\$ 9,651.53
JP Morgan (Line of Credit)	\$ 9,014.50
LVNV Funding, LLC	\$ 565.36
David M. Sousa, Subchapter V Trustee	\$ 61,801.65
Blakeley LLP	\$ 46,479.11
R. Clifford & Associates	\$ 14,918.80
David Johnston, Esq.	\$ 5,200.004
Charles Macawile, Jr.	Balance of all funds remaining

- Z. Subchapter V 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 creditors of the estate as provided.

Motion, Dckt. 134.

Subchapter V Trustee filed the Declaration of David M. Sousa, the Subchapter V Trustee, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 137.

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, Subchapter V Trustee asserts that dismissal is in the best interest of creditors on the basis that creditors will be paid in full, in cash with post-petition interest in short order, so there is nothing for a Chapter 7 trustee to do. Moreover, Debtor is receiving a distribution of nearly \$1 million, and will be debt-free, at least as to those claims that accrued pre-petition.

Subchapter V Trustee further argues that conversion is not in the best interest of creditors because it would result in a delay in paying creditors due to the meeting of creditors, the need to file an accounting, the need to close the case, and the undertaking of any other tasks a Chapter 7 trustee would embark on in administration of the case

DECISION

While the Subchapter V Trustee argues that it is in “the best interests of creditor” for this court to fabricate a claim distribution scheme to distribute more than \$1,642,000, the court does not agree. Congress has created a statutory scheme to distribute monies to creditors which provides creditors, the trustee, and debtor with statutory rights and protection.

At the hearing on a creditor’s motion to dismiss, the Subchapter V Trustee reported to the court that this court has already granted such relief in another of his cases, *In re Barreno Enterprises, Inc.*, 19-90159. While the court granted such conditional dismissal, the facts and circumstances bear no relation to those now before the court. As clearly stated in the Civil Minutes on that motion, the bankruptcy estate had no assets to administer, other than \$27,823.00 in cash to be applied to administrative expenses in excess of that amount. 19-90159; Civil Minutes, Dckt. 167 at 5. There was nothing to be administered for the creditors, nothing to be paid creditors, and nothing to pay any reasonable Chapter 7 administrative expenses.

The Subchapter V Trustee also points the court to another case, *Y&M Rental Property Management, LLC*, 19-90151, in which the court granted another Chapter 11 Subchapter V Trustee’s motion for a conditional dismissal. In looking at the conditional dismissal requirements, the final administration to be done by the Subchapter V Trustee consisted of:

- A. The Subchapter V Trustee filing a final monthly operating report;
- B. The Subchapter V Trustee being authorized to move estate monies in a segregated account into the estate’s general account;
- C. The Subchapter V Trustee making a final distribution on all allowed final administrative expenses;
- D. The Subchapter V Trustee paying other ordinary business expenses and U.S. Subchapter V Trustee quarterly fees through the filing of the final report; and
- E. The Subchapter V Trustee turning over all remaining monies of the bankruptcy estate to that debtor.

19-90151; Order, Dckt. 195.

Again, there were no assets to be administered by the Subchapter V Trustee, but only release the surplus estate back to the debtor. The present case bears no factual similarity to the *Y&M Rental Property*

Management, LLC case. This is clearly discussed in the Civil Minutes relating to the motion for conditional dismissal in the *Y&M Rental Property Management* case, in which the court states:

Here, Subchapter V Trustee argues there is cause to dismiss the case because the only nonadministrative claim (Wells Fargo) has been resolved pursuant to the Agreement and given the lack of non-administrative claims, no purpose would be served through confirmation of a Chapter 11 plan of reorganization in that the estate has sufficient funds on hand to promptly pay all allowed administrative claims now. Additionally, Subchapter V Trustee argues that conversion of this case to Chapter 7 similarly is not warranted in that the Debtor appears to be fully solvent, with no claims to pay, and no purpose would be served through liquidation of the Real Properties.

Id.; Civil Minutes, Dckt. 191 at 5.

In the present case there are reported claims of \$1,518,815.25, which is in addition to the \$138,669.52 in administrative expenses, to be paid, compared to the \$0.00 in claims to be paid in the two “comparable” cases cited to the court by the Subchapter V Trustee.

Though not stated in the Motion, in the Further Brief in Support of Motion For Entry of Order Conditionally Dismissing Case filed by the Subchapter V Trustee on June 2, 2021 (though no provision is made in the Local Bankruptcy Rules for the filing of “Further Briefs” on the eve of a hearing) Subchapter V Trustee suggests that the court could allow the Subchapter V Trustee to disburse \$1,460,766.21 in secured claims of Iron Oak Home Loans, Inc. and John S. Grill from monies that are the proceeds from the sale of the creditor’s collateral. Dckt. 142 at 13-16.

A review of the court’s order authorizing the sale of the 5412 Kiernan Avenue property does not provide for the sale to be free and clear of the liens of either of these creditors. Looking back at the order approving the sale free and clear, “Iron Oak Home Loans Inc.” is identified as the agent for the actual creditor, Scott R. Williams and Anastasie C. Martin as Trustees of the Williams Trust, which is a creditor identified in the order approving the sale as having the property sold free and clear of their lien.

However, John S. Grill is not identified in the Motion to Sell (Dckt. 73), Points and Authorities (Dckt. 76), Subchapter V Trustee’s Declaration (Dckt. 77), Broker’s Declaration (Dckt. 78), Subchapter V Trustee’s Further Statement in Support of Motion (Dckt. 91), Subchapter V Trustee Counsel’s Declaration (Dckt. 92), or Order Approving Sale Free and Clear (Dckt. 103). Additionally, no “John S. Grill” has filed a proof of secured claim, nor is there any other secure claim in the amount range of \$101,904.94 which the Subchapter V Trustee now states Mr. Grill is owed.

The Debtor has listed John Grill as having a secured claim of \$110,000.00 secured by property identified as 4942 Toomes Road, Salida, California. Schedule Dckt. 16 at 14. That property is not the subjection of the Order Approving Sale Free and Clear, so Mr. Grill’s lien would not be addressed through that sale. It is curious that a creditor owed more than \$100,000 would not file a proof of claim in a bankruptcy case.

While the Subchapter V Trustee may have sought to have the sale free and clear of the Iron Oak Home Loans Inc. lien since Iron Oak Home Loans Inc. had not yet consented to the sale, it is unclear why the Subchapter V Trustee did not seek authority to pay the claim on the amount stated in the Proof of Claim

filed plus any additional interest, or if there was a dispute as to some portion of the \$1,358,861.27 claim, pay the undisputed amount to stop the accrual of interest and have the disputed portion subject to adjudication in this court.

With more than \$1.6 Million to distribute to creditors and administrative expenses, the court believes that it is improper to ignore the well crafted Chapter 7 provisions for distributing monies to creditors from liquidated assets of the bankruptcy estate. Functionally, this case has been turned into a Chapter 7 liquidation due to the Debtor's inability to prosecute the case and perform his fiduciary duties as the Debtor in Possession. Additionally, the court has been presented with evidence that Debtor actively worked to impede the administration of this case after he was removed as the debtor in possession.

The court concurred with the Subchapter V Trustee that the continued administration of this case by the Subchapter V Trustee to get the property sold was in the best interests of creditors and the estate, rather than turn over a "mess of a debtor in possession estate" to a new Subchapter V Trustee. The Subchapter V Trustee served the estate well, battling through obstacles to get the property sold and a large surplus estate was created.

Now, all that remains to be done is for a Subchapter V Trustee to disburse the monies. There is no confirmed plan establishing such distribution scheme. The Subchapter V Trustee seeks to have the court construct a scheme, which in part is based on the Debtor stating that a secured claim exists for Mr. Gill. No proof of claim has been filed by Mr. Gill or anyone else willing to state under penalty of perjury in a proof of claim that such a claim exists.

As the court has previously discussed, while the Subchapter V Trustee points to the added cost of interest and a Chapter 7 Subchapter V Trustee fees of \$83,026.39 for distributing \$2,629,870.77 (which is for the administrative expenses, creditor claims, and the surplus back to the Debtor), the court does not find these compelling arguments for the court to construct a claim distribution scheme.

First, the accrual of interest has not been a concern for the Subchapter V Trustee to date. The court notes that by letter dated March 24, 2021 (Exhibit 5, Dckt. 136) the Subchapter V Trustee reports having the payoff demand from Mr. Grill that is now used to compute this secured claim. The payoff demand dated April 28, 2021 from Iron Oak Home Loans Inc. is provided as Exhibit 4, Dckt. 136. (Neither of these Exhibits have been authenticated as required by Federal Rules of Evidence 901 et seq.)

Though apparently having some of this information since late March 2021, the Subchapter V Trustee did not see a need to file either an *ex parte* motion or a motion set for hearing on fourteen days notice to get the secured claims paid and stop the accrual of interest.

As to the \$83,026.39 in Chapter 7 Subchapter V Trustee fees that the Subchapter V Trustee believes a Chapter 7 Subchapter V Trustee would pocket for merely having to distribute consistent with the Bankruptcy Code the monies from the large surplus estate generated through the work of the Subchapter V Trustee, that is incorrect on at least two counts. First, paying a Subchapter V Trustee a fee/commission computed on monies returned to the Debtor would be in violation of federal law, with 11 U.S.C. § 326(a) expressly providing:

§ 326. Limitation on compensation of Subchapter V Trustee

(a) In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the **court may allow reasonable compensation** under section 330 of this title of the Subchapter V Trustee **for the Subchapter V Trustee's services**, payable after the Subchapter V Trustee renders such services, not to exceed [stated percentage amounts], **upon all moneys disbursed** or turned over in the case **by the Subchapter V Trustee to parties in interest, excluding the debtor**, but including holders of secured claims.

The statute allows the reasonable compensation for the Chapter 7 Subchapter V Trustee to not exceed a maximum percentage amount based on monies disbursed by the Subchapter V Trustee that does not include monies disbursed to the debtor.

Second, the court recognizes that the Chapter 7 Subchapter V Trustee fees are in the nature of a commission, averaging out between cases. Congress has beefed up the provisions of 11 U.S.C. § 330 adding § 330(a)(7) which provides, “ (7) In determining the amount of reasonable compensation to be awarded to a Subchapter V Trustee, the court shall treat such compensation as a commission, based on section 326.”

The compensation must be reasonable and a “percentage commission” that is reasonable for taking on the responsibilities in the case. The status does not state ‘The reasonable compensation for a Chapter 7 Subchapter V Trustee shall always be the maximum percentage cap provided in 11 U.S.C. § 326(a).’

In this situation there are several ways the U.S. Subchapter V Trustee can ameliorate the additional administrative costs. First, they could elect to appoint the Subchapter V Trustee as the Chapter 7 Subchapter V Trustee so he can complete his administration of the case. Second, a Chapter 7 Subchapter V Trustee could be appointed to a “perfect case” in which he or she is handed a pile of money and all the Chapter 7 Subchapter V Trustee needs to do is look at the proofs of claim, see if any appear facially defective, and then disburse the money. Such a Subchapter V Trustee may file a reasonable commission to be 1% of the \$1,647,484.77 to be disbursed, which would be a handsome commission for working only as a disbursing agent, the Subchapter V Trustee having done all the work carrying the case to the edge of distribution.

Based on the facts of this case, the evidence presented by the Subchapter V Trustee, and the substantial monies to be disbursed by a fiduciary of the bankruptcy estate, the court will not “veto” Congress and create a judge’s “better” system for properly distributing millions of dollars for claims and administrative expenses.

The Motion is granted, with the case being converted to one under Chapter 7, the court concluding conversion being in the best interests of creditors and the estate so that the estate may be properly administered under the law as written by Congress and the \$1.6 Million of claim distributions may be done with the protections and requirements established under Chapter 7.

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 Dismissal of this Case filed by David Sousa, the Subchapter V Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and this case is converted to one under Chapter 7.

Subchapter V

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, Chapter 11 Subchapter V Trustee, creditors, parties requesting special notice, and Office of the United States Subchapter V Trustee on November 18, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case and/or Motion to Convert 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 Case and/or Motion to Convert is granted, with the case converted to one under Chapter 7.

REVIEW OF MOTION

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Charles Collantes Macawile, Jr. ("Debtor") has been filed by creditors Scott R. Williams and Anastasie C. Martin, Subchapter V Trustees of The Williams Trust Dated August 19, 2014, its successors and/or assignees ("Movant"). Movant is the current payee of a Promissory Note dated September 6, 2018 in the principal amount of \$1,000,000.00 secured by a First Deed of Trust, executed and recorded in Stanislaus County and which encumbers the real property located at 5412 Kieman Avenue, Salida, California 95368 ("Property"). The total amount of Movant's claim as of the Petition Date is \$1,190,684.75.

Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. This is Debtor's second pending bankruptcy case in the last eight (8) months.
- B. In the previous case (Case No. 20-90139), filed as a Chapter 13 case, Debtor proposed paying off the loan via a refinance in nine (9) months. Movant objected to this treatment and the objection was sustained.
- C. Six days after the previous case was dismissed, Debtor filed the instant case under Chapter 11 as a Small Business Subchapter V.
- D. Pursuant to Schedule I, neither the Debtor nor his non-filing spouse earn any income. Additionally, according to Schedule J, Debtor is running a deficit of \$2,267 each month.
- E. Debtor has again proposed to refinance to pay off Movant and in the Status Report filed on July 23, 2020, Debtor asserts having obtained a loan commitment from a lender in Mexico and is negotiating an agreement to lease the Property. Moreover, Debtor received an \$1.8 Million offer to purchase the subject Property but turned it down.
- F. At the meeting of creditors, Debtor testified that he intended to sell the Property to his wife, who qualified for a loan in April 2020 and was waiting for the finance to come through.
- G. Debtor has not filed a plan and his motion to extend the deadline to file a plan was denied.
- H. At the October 1, 2020 status conference, Debtor's Counsel informed the court that Debtor's plans of financing had not materialized.
- I. Debtor has not provided evidence that there is a reasonable likelihood that a plan will be confirmed within a reasonable time.

APPLICABLE LAW

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

Subchapter V Trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Creditor's concerns are well taken. Debtor has failed to confirm a plan. Additionally, the Debtor has no income and is acting to the detriment of creditors by, namely, having turned down an offer to sell the Property which would have allowed for his creditors to be paid.

The instant motion was filed prior to the November 18, 2020 Status Conference. At the status conference, the court addressed the same concerns Movant raises now. After reviewing the facts of the case, it was determined that Debtor in Possession be removed and Subchapter V Subchapter V Trustee will now market and sell the property. Civil Minutes, Dckt. 53.

The hearing has been continued at the request of Movant.

February 11, 2021 Hearing

Since the last hearing, the Subchapter V Subchapter V Trustee has filed a Motion to Employ a Real Estate Broker (RAC-1) and a Motion to Employ Counsel for the Subchapter V Subchapter V Trustee (RAC-2) on January 22, 2020. Dckts. 66, 61. Both motions were granted and the Orders were entered on January 25, 2021. See Dckts. 71, 72.

The Subchapter V Subchapter V Trustee also filed a Motion to Sell real property free and clear of liens (RAC-3) on January 29, 2021 and set for hearing at 10:30 a.m. on March 11, 2021. Dckt. 73.

March 11, 2021 Hearing

The Motion to Sell filed by the Subchapter V was granted.

May 20, 2021 Hearing

The Subchapter V Trustee filed a Status Report for a Status Conference set for hearing on April 29, 2021. Dckt. 106. The Status Conference was continued to July 29, 2021. However, the court summarizes Subchapter V Trustee's report for purposes of providing context. The Subchapter V Trustee details his efforts in selling property of the bankruptcy estate and provides a dark picture of Debtor's and Ms. Cruz efforts to impede Subchapter V Trustee's sale and administration of other property of the estate. Subchapter V Trustee concludes with providing of steps to be taken in order to pay the claims after the sale of the property, dismissal of this case, and that there will be a sizeable dividend to the Debtor. Subchapter V Trustee adds that he will provide all the documentation related to Debtor and Ms. Cruz wrongdoings to the United States Subchapter V Trustee for further review and action, if any.

The Subchapter V Trustee has also filed his first and final application for fees and expenses, which has been set for June 3, 2021 at 10:30 a.m. Dckt. 123. A Motion for Conditional Dismissal of this case was filed on May 13, 2021. Dckt. 134.

No other documents or pleadings have been filed by Movant.

CONVERSION OF CASE TO CHAPTER 7

In considering this Motion, the court begins with the personal knowledge testimony of the Subchapter V Trustee. Declaration, Dckt. 137. The Subchapter V Trustee's personal knowledge testimony (Fed. R. Evid. 601, 602) consists of: (1) stating that he is the Subchapter V Trustee in this case; (2) his testimony is provided in support of the Motion to Conditionally Dismiss this Case; and (3) he believes that Conditional Dismissal is proper based on whatever his attorney has put in the Motion. Other than telling the court that he is the Subchapter V Trustee, he provides no factual testimony.

The Motion is full of various factual allegations, many of which are drawn from the Schedules and pleadings in this case. The Subchapter V Trustee was able to sell the Kiernan Avenue Property for \$2,800,000. The net sales proceeds were \$2,625,879.77. The Motion alleges various acts and actions by Debtor and his spouse that are asserted to have been done to impair the Subchapter V Trustee's ability to sell the Property and which may have reduced the sales value of the Property.

For claims to be administered, Iron Oak Home Loans, Inc. and its principals for which it is servicing a loan, assert a claim secured by the \$2,625,879.77 in sales proceeds. Amended Proof of Claim No. 8-2 has been filed by Iron Oak Home Loans for (\$1,190,684.75). The Motion states that an updated payoff demand of (\$1,358,861.27) has been made by Iron Oak Home Loans.

The Subchapter V Trustee also identifies a John Grill as having a deed of trust against the Toomes Road Property, Debtor's residence. No proof of claim has been filed by Mr. Grill. The Motion states that Mr. Grill has made a payoff demand of \$101,904.94, computed through June 3, 2021. A secured claim has been filed by Stanislaus County for (\$1,749.45) (POC 10-1) for which the Toomes Road Property secures that claim.

For priority unsecured claims, the Internal Revenue Service has filed Proof of Claim 7-1 in the amount of (\$3,318.00).

For general unsecured claims, proofs of claims totaling \$13,648.27 have been filed. In the Motion a review of the Debtor's Schedule E/F discloses \$53,438.00 in listed general unsecured claims.

For administrative expenses, the Motion projects \$128,669.56.

After providing for all claims in full, the Motion computes there being \$978,395 in surplus estate monies.

The Motion seeks to have this court create a liquidation distribution scheme and then have the court address all issues arising from the court created liquidation distribution scheme. It is asserted that such a liquidation distribution scheme is superior to converting this to a Chapter 7 case (for which Congress has create as a matter of federal law a bankruptcy liquidation administration and distribution scheme) because it would avoid Chapter 7 administrative expenses.

The court declines the opportunity to follow the ruling in an unreported Texas Bankruptcy Case for creating such a scheme. This case has been fraught with alleged misconduct by Debtor and Debtor's spouse, impairment in the Subchapter V Trustee in fulfilling his obligations, and general dysfunctionality

on the part of the Debtor. Rather than creating a non-statutory, specially created, liquidation administration and distribution scheme, the court selects that created from the wisdom of the legislative process - Chapter 7.

To the extent that the Subchapter V Trustee and U.S. Subchapter V Trustee are concerned over there being duplicative or excessive Chapter 7 Subchapter V Trustee expenses, it may be that the U.S. Subchapter V Trustee appoints the Chapter V Subchapter V Trustee to conclude this case as the Chapter 7 Subchapter V Trustee. Or, if a new Chapter 7 Subchapter V Trustee is appointed, he or she can request only reasonable fees for the actual services provided (11 U.S.C. § 326(a) allowing only reasonable fees, which cannot exceed the maximum percentage fee caps).

Cause exists to convert this case to one under Chapter 7.

The court has also granted the Subchapter V Trustee's Motion for Conditional Dismissal, determining that conversion of this case to one under Chapter 7 to provide for the distribution of more than \$1.6 Million for administrative expenses and claims be done under the statutory scheme and protections enacted by Congress rather than having this court create an ad hoc distribution scheme for more than \$1.6 Million.

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 Dismissal or Conversion of this Case to One Under Chapter 7 filed by creditors Scott R. Williams and Anastasie C. Martin, Subchapter V Trustees of The Williams Trust 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 this case is converted to one under Chapter 7.

FINAL RULINGS

8. [19-90493-E-7](#)
[DCJ-2](#)

M. LEAVITT
David Johnston

CONTINUED MOTION TO AVOID LIEN
OF BANK OF THE WEST
3-25-21 [\[27\]](#)

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.

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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 25, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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.

The court having issued an Order granting the Motion (Dckt. 57), the matter is removed from the Calendar.

Final Ruling: No appearance at the June 3, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by Gary R. Farrar (“the Chapter 7 Trustee”) requests that the court authorize him to abandon property commonly known as 306 High Street, Modesto, California (“Property”). The Property is encumbered by the liens of LoanCare LLC, securing claims of \$240,583.82. The Declaration of Gary R. Farrar has been filed in support of the Motion and provides testimony that the value of the Property is \$312,400.00.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Gary R. 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 Compel Abandonment is granted, and the Property identified as 306 High Street, Modesto, California, is abandoned to Tricia Marie Dodson by this order, with no further act of the Chapter 7 Trustee required.

10. [19-90110-E-7](#)
[SHA-2](#)

CAMPBELL WINGS, INC.
Reno Fernandez

**FINAL HEARING RE: MOTION FOR
ADMINISTRATIVE EXPENSES
6-26-19 [\[40\]](#)**

Final Ruling: No appearance at the June 3, 2021 hearing is required.

Debtor’s Atty: Reno F.R. Fernandez

Trustee’s Atty: Anthony D. Johnston

Creditor’s [Hamilton and Bascom, LLC] Atty: Stanford H. Atwood, Jr.

Notes:

Set by order of the court filed 11/23/20 [Dckt. 119] for the Parties to identify and diligently undertake discovery, identify the issues in dispute, and diligently prosecute this contested matter.

<p>The hearing on the Motion for Administrative Expenses is continued to 10:30 a.m. on June 24, 2021.</p>
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JUNE 3, 2021 HEARING

The Parties have invested substantial time, and corresponding money, into providing the court with detailed briefing, supplemental briefing, and evidence. Unfortunately, the court has not been able to provide the time for the detailed review required for conducting a productive oral argument and ultimately issuing a ruling.

Therefore, the court continues the hearing to 10:30 a.m. on June 24, 2021, to provide the parties and their respective counsel with as productive of an oral argument as can be conducted by 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 Motion for Administrative Expense filed by Hamilton and Bascom, LLC having been finally briefed and evidence filed with the court, the court needing

additional time to fully review all of the pleadings and evidence before conducting oral argument, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Administrative Expense is continued to 10:30 a.m. on June 24, 2021, the court's next regular law and motion calendar.

If this continuance creates an irreconcilable conflict for either the parties or counsel, they shall meet and confer to identify the next available law and motion date, and then file a simple *ex parte* motion to continue the hearing to that date and lodge a proposed order with the court. If the parties cannot concur on a date, the party with the conflict shall file an *ex parte* motion with the court requesting a continuance, stating the reason for the irreconcilable conflict, and identify the next three nearest future hearing dates for the final continuance. The other parties will have seven days to file a response stating which of those dates the other party does not have a conflict. If conflicts are stated for all of the suggested dates, the court will unilaterally select the final continuance of the hearing.