

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

June 27, 2019 at 10:30 a.m.

1. [19-90206-E-7](#)

BERNICE GARCIA

Pro Se

**TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
5-10-19 [\[14\]](#)**

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 (*pro se*) and Office of the United States Trustee on May 12, 2019. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 7 Trustee, Gary Farrar ("Trustee"), seeks dismissal of the case on the grounds that Bernice Flora Garcia, debtor in *pro se* ("Debtor"), did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

DISCUSSION

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

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

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Gary Farrar (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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| 2. <u>19-90525-E-7</u> <u>BSH-1</u> | STEPHEN COLLINS Brian Haddix | MOTION TO COMPEL ABANDONMENT 6-7-19 [8] |
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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, and Office of the United States Trustee on June 7, 2019. By the court’s calculation, 20 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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| <p>The Motion to Compel Abandonment is granted.</p> |
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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 the debtor, Stephen Collins (“Debtor”), requests the court to order Michael D. McGranahan (“the Chapter 7 Trustee”) to abandon the following property (collectively the “Property”):

| <i>Asset</i> | Value | Encumbrance | Equity | Exemption (CCP) | Amount Claimed Exempt |
|---|--------------|--------------------|---------------|------------------------|------------------------------|
| <i>2009 Toyota Corolla</i> | \$3,000 | \$3,200 | \$0 | §703.140(b)(2) | |
| <i>2006 Nissan Armada</i> | \$4,000 | \$2,281 | \$1,719 | §703.140(b)(2) | \$1,719 |
| <i>Household Goods & Furnishings</i> | \$2,500 | None | \$2,500 | §703.140(b)(3) | \$2,500 |
| <i>Consumer Electronics</i> | \$1,209 | None | \$1,209 | §703.140(b)(3) | \$1,209 |
| <i>Golf Clubs</i> | \$450 | None | \$450 | §703.140(b)(5) | \$450 |
| <i>Clothing & Apparel</i> | \$1,500 | None | \$1,500 | §703.140(b)(3) | \$1,500 |
| <i>Watches, Wedding Rings</i> | \$900 | None | \$900 | §703.140(b)(4) | \$900 |
| <i>Two (2) Cats</i> | \$1 | None | \$1 | §703.140(b)(5) | \$1 |
| <i>Financial Account (5405)</i> | \$0 | None | \$0 | §703.140(b)(5) | \$0 |
| <i>Financial Account (3502)</i> | \$780.78 | None | \$780.78 | §703.140(b)(5) | \$780.78 |
| <i>Financial Account (0723-S00)</i> | \$98.41 | None | \$98.41 | §703.140(b)(5) | \$98.41 |
| <i>Financial Account (0723-81)</i> | \$83.62 | None | \$83.62 | §703.140(b)(5) | \$83.62 |
| <i>Financial Account (2626)</i> | \$236.21 | None | \$236.21 | §703.140(b)(5) | \$236.21 |
| <i>Professional License</i> | \$0 | None | \$0 | §703.140(b)(5) | \$0 |
| <i>Front desk with two chairs, waiting room chairs, computer, copier, fax machine</i> | \$2,500 | None | \$2,500 | §703.140(b)(5) | \$2,500 |

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|---|----------|------|----------|---------------------------------------|----------|
| <i>Laser, arthrostim, adjusting benches, stools</i> | \$10,000 | None | \$10,000 | §703.140(b)(5) & §703.140(b)(6) | \$10,000 |
|---|----------|------|----------|---------------------------------------|----------|

Debtor states in the Motion that all the equity in the Property is exempt, and that therefore the Property is of inconsequential value or benefit to the estate or burdensome to the estate to administer.

Debtor's arguments are well-taken. All the Property is either wholly encumbered or claimed exempt. Furthermore, the Chapter 7 Trustee, Michael D. McGranahan, has not filed an opposition to the motion.

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 (not a minute order) substantially in the following form holding that:

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

The Motion to Compel Abandonment filed by Stephen Collins ("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:

| <i>Asset</i> | Value | Encumbrance | Equity | Exemption (CCP) | Amount Claimed Exempt |
|--|--------------|--------------------|---------------|----------------------------|--------------------------------------|
| <i>2009 Toyota Corolla</i> | \$3,000 | \$3,200 | \$0 | §703.140(b)(2) | |
| <i>2006 Nissan Armada</i> | \$4,000 | \$2,281 | \$1,719 | §703.140(b)(2) | \$1,719 |
| <i>Household Goods & Furnishings</i> | \$2,500 | None | \$2,500 | §703.140(b)(3) | \$2,500 |
| <i>Consumer Electronics</i> | \$1,209 | None | \$1,209 | §703.140(b)(3) | \$1,209 |
| <i>Golf Clubs</i> | \$450 | None | \$450 | §703.140(b)(5) | \$450 |
| <i>Clothing & Apparel</i> | \$1,500 | None | \$1,500 | §703.140(b)(3) | \$1,500 |

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|---|----------|------|----------|---------------------------------|----------|
| <i>Watches, Wedding Rings</i> | \$900 | None | \$900 | §703.140(b)(4) | \$900 |
| <i>Two (2) Cats</i> | \$1 | None | \$1 | §703.140(b)(5) | \$1 |
| <i>Financial Account (5405)</i> | \$0 | None | \$0 | §703.140(b)(5) | \$0 |
| <i>Financial Account (3502)</i> | \$780.78 | None | \$780.78 | §703.140(b)(5) | \$780.78 |
| <i>Financial Account (0723-S00)</i> | \$98.41 | None | \$98.41 | §703.140(b)(5) | \$98.41 |
| <i>Financial Account (0723-81)</i> | \$83.62 | None | \$83.62 | §703.140(b)(5) | \$83.62 |
| <i>Financial Account (2626)</i> | \$236.21 | None | \$236.21 | §703.140(b)(5) | \$236.21 |
| <i>Professional License</i> | \$0 | None | \$0 | §703.140(b)(5) | \$0 |
| <i>Front desk with two chairs, waiting room chairs, computer, copier, fax machine</i> | \$2,500 | None | \$2,500 | §703.140(b)(5) | \$2,500 |
| <i>Laser, arthrostim, adjusting benches, stools</i> | \$10,000 | None | \$10,000 | §703.140(b)(5) & §703.140(b)(6) | \$10,000 |

and listed on Schedules A/B (Dckt. 1) by Debtor is abandoned by the Chapter 7 Trustee, Michael McGranahan (“the Chapter 7 Trustee”), to Debtor by this order, with no further act of the Chapter 7 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court’s calculation, 49 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

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| <p>The Motion to Sell Property is granted.</p> |
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The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell personal property of the debtors, Jorge Negrete and Veronica Ayard (“Debtor”), commonly known as a 2018 Ford Concept Concession Trailer VIN ending in 0033 (“Vehicle”).

Movant states that Debtor valued the Vehicle at \$15,000.00, listed no encumbrances, and claimed no exemptions.

Movant filed the Declaration of David Huisman in support of the Motion providing testimony that the Vehicle at auction will likely receive a winning bid of \$15,000.00 to \$20,000.00. Declaration ¶ 4, Dckt. 36. The Huisman Declaration further testifies that public auction would obtain the best possible sale price for the Vehicle. *Id.*, ¶ 2.

Movant seeks approval to sell the property “as-is” at public auction.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Movant to achieve the best sale price for the Property.

Subsequent Private Sale

In the Motion and Declaration of Michael D McGranahan, the following representation is made:

If, in the exercise of my business judgement, no reasonable bids are received, the Vehicle may be held for subsequent auction or private sale without additional notice

Declaration ¶ 6, Dckt. 37.

Here, it seems Movant is requesting approval to sell the Vehicle at a private sale in the event public auction is not successful. However, there is no actual request—Movant is merely relaying this as a matter of fact.

No grounds have been stated with particularity (FED. R. BANKR. P. 9013) in support of this relief.

Effectively, Movant is asking for the court to preapprove any sale terms. The court declines such preapproval.

Sale of the Vehicle through private sale is not authorized except on further order of the court.

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

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

The Motion to Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) at public auction, the property commonly known as 2018 Ford Concept Concession Trailer VIN ending in 0033 (“Vehicle”).

IT IS FURTHER ORDERED that the Trustee is authorized to pay the commission and expenses permitted by the order authorizing employment of the Auctioneer directly from the sales proceeds.

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IT IS ORDERED that sale of the Vehicle through private sale is not authorized except on further order of the court after notice and hearing pursuant to 11 U.S.C. § 363.

4. [19-90027-E-7](#)
[BLF-5](#)

**JORGE NEGRETE AND
VERONICA AYARD
Thomas Gillis**

**MOTION TO EMPLOY HUISMAN
AUCTIONS, INC. AS AUCTIONEER(S)
5-17-19 [\[48\]](#)**

Final Ruling: No appearance at the June 27, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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| The Motion to Employ is granted. |
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The Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), seeks to employ as auctioneer Huisman Auctions, Inc. ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to sell property of the debtors, Jorge Negrete and Veronica Ayard ("Debtor"), identified as a 2018 Food Concept Concession Trailer ("Vehicle").

Trustee argues that Auctioneer's appointment and retention is necessary to market and sell the Vehicle at public auction. Auctioneer has agreed to a commission of 15 percent of the gross proceeds of sale, 10 percent of the gross proceeds as a "buyer's premium," and reimbursement of expenses (not to exceed \$65.00) incurred in preparing the Vehicle for sale.

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David Huisman, the President of Auctioneer, testifies that he has been in business for 55 years and is familiar with the Vehicle. David Huisman testifies further he and Auctioneer do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Huisman Auctions, Inc. as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit B, Dckt. 52. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

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

IT IS ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ Huisman Auctions, Inc. as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit B, Dckt. 52.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

5. [19-90027-E-7](#)
[BLF-4](#)

**JORGE NEGRETE AND
VERONICA AYARD**
Thomas Gillis

**MOTION FOR COMPENSATION FOR
HUISMAN AUCTIONS, INC.,
AUCTIONEER(S)**
5-9-19 [\[40\]](#)

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 9, 2019. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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| The Motion for Allowance of Professional Fees is granted. |
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Michael D. McGranahan, the Chapter 7 Trustee (“Movant”), filed this Motion seeking preapproval of commission fees for Huisman Auctions, Inc., as Auctioneer (“Auctioneer”), in relation to the sale of property of the Estate.

Movant filed a motion to sell (Dckt. 34) set for hearing the same day as the hearing of this Motion seeking authority to sell at auction a 2018 Ford Concept Concession Trailer VIN ending in 0033 (the “Property”). A review of the docket shows the court has granted that motion.

Movant also filed a motion to employ the Auctioneer (Dckt. 48) set for hearing the same day as the hearing of this Motion, which the court granted.

Movant is requesting approval of the following fees and expenses as set out fully in the Auction Agreement (Exhibit B, Dckt. 44).

1. Commission of 15 percent of gross sales price.
2. Reimbursement of expenses incurred in preparation of selling the vehicle not to exceed \$65.00.
3. A 10 percent buyer’s premium.

Movant filed the Declarations of Michael D. McGranahan and David Huisman to establish evidence that the fees requested herein are reasonable. Dckts. 42, 43.

Supplemental Declaration

Movant filed an additional Declaration of Michael D. McGranahan on May 28, 2019. Dckt. 56. This Declaration provides testimony that (1) other auction companies charge greater fees for transportation, storage, marketing, and document processing; (2) that auction companies generally charge a buyer’s fee; and (3) that because buyer’s premiums are standard practice, the premium will not diminish the sale price.

DISCUSSION

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

Here, Movant is seeking approval of a commission for the Auctioneer. The Auctioneer estimates the sales price of the Property will be \$15,000.00 to \$20,000.00. Declaration ¶ 4, Dckt. 42.

Thus, using the estimated sales price, Movant is seeking approval of the following fees:

1. \$2,250.00 to \$3000.00 (15 percent commission).
2. \$65.00 in expenses.

3. \$1,500.00 to \$2,000.00 (10 percent buyer's premium).

Total fees requested is \$3,815.00 to \$5,065.00.

In the Motion, Movant states the following as to the "buyer's premium:"

[Auctioneer] will also charge and retain a buyer's premium of 10% of the gross sales price of each item sold (the "Buyer's Premium"). The Buyer's Premium is assessed directly to the buyers. The Buyer's Premium in part covers Huisman Auctions' administrative costs, including insurance, bonds, administrative staff and other expenses that are not passed on to the seller.

Motion ¶ 11, Dckt. 40. Movant actually borrows this language from the Auction Agreement. Exhibit B, Dckt. 44.

Movant argues in a supplemental declaration that the buyer's premium does not affect the sales price because buyer's are used to it. This argument is not well-taken. The total commission being sought is 25 percent—that buyers are aware of a buyer's premium only supports the notion that they reduce their bid to account for that additional fee.

Movant also argues that the fees requested herein are reasonable in light of other companies' requested fees (largely for expenses). However, Movant does not actually provide evidence of other auctioneer companies, and what their commission and expense fees are.

Here, the value of the vehicle sold is relatively modest, projected to be around \$15,000.00, which is the fair market value. The commission of 15 percent on the gross sales proceeds is relatively common and appropriate. The court allows the Auctioneer to keep the commission, but not the Buyer's Premium. The court questions the basis for requesting the combined 25 percent of the sales proceeds. The court does not allow the Auctioneer to keep the Buyer's Premium and the balance of the Buyer's Premium should be paid to the Chapter 7 Trustee. If Auctioneer feels that the Buyer's Premium is still appropriate after receiving the commission, Auctioneer can file a subsequent Motion for Compensation and explain to the Court the basis for the necessity for the 10 percent Buyer's Premium.

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 Michael D. McGranahan, the Chapter 7 Trustee ("Movant"), seeking preapproval of commission fees for Huisman Auctions, Inc., the Auctioneer ("Auctioneer") having presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.

IT IS ORDERED that Auctioneer is allowed, and Movant is authorized to pay, a 15 percent commission of gross sale proceeds of property of the Estate identified as 2018 Ford Concept Concession Trailer VIN ending in 0033 ("Property") and expenses up to \$65.00.

IT IS FURTHER ORDERED that additional compensation in the form of a 10% buyer's premium, which is paid by the buyer in addition to the sales price, computed on the first \$17,000.00 of the sale price may be paid to the Auctioneer and all amounts of the buyer's premium in excess thereof shall be paid to the Trustee for the benefit of the bankruptcy estate, unless permitted to be paid the Auctioneer pursuant to a supplemental motion pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

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| 6. | <u>12-93049</u> -E-11 <u>BLF-4</u> | MARK/ANGELA GARCIA Mark Hannon | MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, OTHER PROFESSIONAL(S) 5-23-19 [10.49] |
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, 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 23, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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| The Motion for Allowance of Professional Fees is <i>granted</i>. |
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The Bakken Law Firm, the Attorney (“Applicant”) for Gary R. Farrar, the Plan Administrator (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 15, 2019, through June 27, 2019. The order of the court approving employment of Applicant was entered on March 18, 2019. Dckt. 1044. Applicant requests fees in the amount of \$10,290.00 and costs in the amount of \$734.90.

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 general case administration and prosecution of a motion for refinancing. 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.

Employment Application: Applicant spent 5.8 hours in this category. Applicant prepared Applicant’s fee agreement and prosecuted the motion to authorize Applicant’s employment.

Motion For Approval of Refinancing: Applicant spent 29.4 hours in this category. Applicant reviewed Debtor’s motion for authorization to refinance against property of the Estate and reviewed the following court order denying Debtor’s motion; reviewed the preliminary title reports and proposed loan documents; communicated with Debtors, Client, and counsel for G Street Investments, LLC; and prosecuted a motion to approve postpetition refinance.

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 |
|--|-------------|--------------------|--|
| Loris L. Bakken | 33.4 | \$300.00 | \$10,020.00 |
| Loris L. Bakken | 1.8 | \$150.00 | \$270.00 |
| Total Fees for Period of Application | | | \$10,290.00 |

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$734.90 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|-------------------------------------|-------------|
| Postage | | \$334.90 |
| Copying | \$0.10 per page | \$400.00 |
| Total Costs Requested in Application | | \$734.90 |

FEES AND COSTS & EXPENSES ALLOWED

Work Performed Before Employed

The Order authorizing the employment of Applicant was issued on March 18, 2019. Dckt. 1044. That Order did not specify an effective date—indicating the effective date was the date of issuance.

Applicant herein requests fees for a period commencing January 15, 2019, almost two months before Applicant was authorized to be employed. In reviewing the raw billing records (Exhibit A, Dckt. 1053), it appears that the vast majority of work performed was before the court authorized Applicant's employment (30.5 hours in total).

The Application for fees does not address this issue, or provide explanation why fees incurred by a professional not authorized to be employed should be allowed.

At the hearing, Applicant addressed for the court the reason for the retroactive authorization that exceeds 30 days prior to the filing of the Motion for Employment. xxxxxxxxxxxxxxxx.

Fees

~~_____ The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$10,290.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds.~~

Costs & Expenses

~~_____ First and final Costs in the amount of \$734.90 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds.~~

~~_____ Applicant is allowed, and Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:~~

| | |
|---|------------------------|
| _____ Fees _____ | \$10,290.00 |
| _____ Costs and Expenses _____ | \$734.90 |

~~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 the Bakken Law Firm (“Applicant”), Attorney for Gary R. Farrar, the Plan Administrator, (“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 the Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:~~

~~_____ Loris L. Bakken , Professional employed by Gary R. Farrar, the Plan Administrator~~

~~_____ Fees in the amount of \$10,290.00~~

~~_____ Expenses in the amount of \$734.90;~~

~~_____ as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator.~~

Final Ruling: No appearance at the June 27, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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| <p>The Motion for Allowance of Professional Fees is granted.</p> |
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Gary Farrar, the Plan Administrator ("Applicant") for Mark and Angela Garcia, Chapter 11 Debtors ("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 23, 2019, through May 22, 2019. The order of the court approving employment of Applicant was entered on February 28, 2017. Dckt. 939.

Applicant requests fees in the amount of \$13,890.00.

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 employment of special counsel, preparation of motions, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Accounting/Auditing: Applicant spent 19.4 hours in this category. Applicant communicated with Client and creditors regarding the collection and disbursement of monthly payments.

Case Administration: Applicant spent 26.9 hours in this category. Applicant appeared at status conferences and other important hearings, assisted with the prosecution of a motion to refinance, and dealt with various issues stemming from the close of escrow on a refinance loan.

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 |
|--|-------------|--------------------|--|
| Gary Farrar | 46.30 | \$300.00 | \$13,890.00 |
| Total Fees for Period of Application | | | \$13,890.00 |

FEES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$13,890.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Plan Administrator from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Plan Administrator to pay the fees allowed by the court.

June 27, 2019 at 10:30 a.m.

- Page 20 of 55 -

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

| | |
|------|-------------|
| Fees | \$13,890.00 |
|------|-------------|

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Gary Farrar (“Applicant”), the Plan Administrator for Mark and Angela Garcia, Chapter 11 Debtor, (“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 Gary Farrar is allowed the following fees and expenses as a professional of the Estate:

Gary Farrar, Professional employed by the Chapter 11 Debtor

Fees in the amount of \$13,890.00

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Plan Administrator is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2019. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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|---|
| <p>The Motion for Approval of Compromise is granted.</p> |
|---|

Irma Edmonds, the Chapter 7 Trustee ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Debtor's grandmother, Nancy Pell ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to an alleged preferential payment of \$1,900.00 made to Settlor by the debtor, Jessica Len Hageman ("Debtor").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms:

- A. Settlor shall pay \$1,900.00 to Movant.
- B. Movant releases all claims against Settlor.

DISCUSSION

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the probability of success in the present type of litigation is high because the settlement recovers the same amount disbursed as a preference, and because there is no apparent defense.

Movant presented evidence that a payment of \$1,900.00 was made to Settlor on her claim within 1 year of filing this case. Declaration ¶ 2, Dckt. 27. Therefore, the probability of success appears high and this factor supports settlement.

Difficulties in Collection

Movant argues collection is not an issue because of the settlement.

Movant misunderstands this factor. What is solicited is how difficult collection would be after a successful judgement on the merits. The court has not been provided evidence as to whether Settlor has reachable assets. However, based on the modest settlement amount the court finds as a practical matter that any effort to enforce the judgement would quickly diminish the recovery. Therefore, this factor weighs in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant (apparently determining this factor is not important) argues “the litigation would be a mix of law and facts. Having received settlement funds, this factor waives [sic] in favor of settlement.”

While Movant cannot be bothered to provide analysis here, the court readily determines that the litigation herein does not appear complex. The facts are straight forward: Settlor received payment on her claim within a year of Debtor filing this case. The litigation would likely resolve very quickly and not result in great expense. Therefore, this factor weighs against settlement.

Paramount Interest of Creditors

Movant argues this settlement is reasonable and in her business judgement.

Here, the settlement obtains exactly what Movant, on the behalf of the Estate, would recover if successful at trial. Therefore, it is clearly in the interest of creditors to accept the settlement and prevent further cost.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement recovers the same amount that would be recovered if successful at trial. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Nancy Pell (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the following terms:

- A. Settlor shall pay \$1,900.00 to Movant.
- B. Movant releases all claims against Settlor.

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's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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The Motion for Allowance of Professional Fees is granted.

Carl Collins, the Attorney ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 18, 2011, through December 12, 2017. The order of the court approving employment of Applicant was entered on February 18, 2011. Dckt. 15. Applicant requests fees in the amount of \$29,432.25 and costs in the amount of \$584.73.

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 asset disposition, case administration, claims administration, and litigation. 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.

Asset Disposition: Applicant spent 39.30 hours in this category. Applicant assisted the Trustee in identifying the disposition of the estate's assets with reference to the marital dissolution of the Debtor and non-filing spouse, Timothy Brown. Applicant assisted in resolving community property disputes, including filing a motion to compel turnover of property of the estate, drafting a settlement and mutual release agreement, filing a motion to approve a compromise of controversy regarding the turnover of property to the estate, filing a motion to hold Timothy Brown in contempt as well as filing a motion for the consolidation of a money judgment and corrective contempt sanctions for purposes of enforcement under Federal Rule of Bankruptcy Procedure 7069(a) & (b).

General Case Administration: Applicant spent 1.0 hours in this category. Applicant held a conference with Trustee regarding the Office of the United States Trustee's audit of the Debtor's ex-husband, Timothy Brown, including his business interest and property in Mexico.

Claims Administration: Applicant spent 2.8 hours in this category. Applicant filed a motion for allowance *nunc pro tunc* of administrative expense of the estate regarding the expense of a preliminary title report on Timothy Brown's residence.

Fee/Employment Applications: Applicant spent 6.40 hours in this category. Applicant prepared and filed an employment application of Applicant for Trustee. Applicant prepared and filed an employment application for special counsel for the Trustee, David J. Cook, to collect a judgment and corrective sanctions against ex-husband, Timothy Brown. Applicant compiled and reviewed time for the within application of attorney for final compensation and reimbursement of expenses.

Litigation: Applicant spent 48.70 hours in this category. Applicant assisted Trustee by preparing and filing a complaint for turnover of property of the estate against ex-husband, Timothy Brown *In re McGranahan v. Brown* (Adv. Proc. No. 12-09003). Applicant drafted a status conference statement, a motion for summary judgment, and an ex parte application to consolidate money judgment and corrective contempt sanctions. Applicant and drafted discovery requests and attended several hearings and status conferences.

Meeting of Creditors: Applicant spent 2.1 hours in this category. Applicant reviewed the chapter 13 case bankruptcy case docket for ex-husband, Timothy Brown, and made an appearance at his 341(a) Meeting of Creditors and the subsequent continued meeting of creditors.

Plan and Disclosure Statement: Applicant spent 7.6 hours in this category. Applicant performed certain case administration tasks, including: reviewing the case docket, schedules and certain filings In re Timothy Brown. Applicant had various telephone conferences with special counsel regarding Timothy Brown's case filing and the impact on the within case. Applicant also communicated with Chapter 13 Trustee's counsel In re Timothy Brown regarding Trustee's objections to Timothy Brown's plan. Applicant drafted objections to the first amended chapter 13 plan and related filings.

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 |
|--|-------------|--------------------|--|
| Carl Collins | 95.50 | \$295.00 | \$28,172.50 |
| Carl Collins | 2.50 | \$147.50 | \$368.75 |
| Claudia Alaron | 9.90 | \$90.00 | \$891.00 |
| Total Fees for Period of Application | | | \$29,432.25 |

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$584.73 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|-------------------------------------|-------------|
| Photocopies | \$0.10 | \$175.80 |
| Postage | | \$375.93 |
| Certified Copies | | \$33.00 |
| Total Costs Requested in Application | | \$584.73 |

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 \$29,432.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs

First and Final Costs in the amount of \$584.73 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

| | |
|--------------------|-------------|
| Fees | \$29,432.25 |
| Costs and Expenses | \$584.73 |

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 Carl Collins (“Applicant”), Attorney for Michael McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Carl Collins is allowed the following fees and expenses as a professional of the Estate:

Carl Collins, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$29,432.25
Expenses in the amount of \$584.73,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 7 case.

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's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

David J. Cook, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 17, 2014, through April 24, 2019. The order of the court approving employment of Applicant was entered on March 17, 2014. Dckt. 121. Applicant requests fees in the amount of \$16,070.25 and costs in the amount of \$7,561.29.

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 issuance of an assignment order and mass service thereof, levy against the residence and proceeding with an order for sale, and order authorizing private process servers to enforce the writ of execution. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to enforce a judgement, for which Client agreed to a contingent fee of 25% of the gross plus costs. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). Order, Dckt. 121. \$64,281.14 of net monies (exclusive of these requested fees and costs) was recovered for Client. Declaration ¶ 4, Dckt. 227. Therefore, the fee award is \$16,070.25.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$7,561.29 pursuant to this application.

The costs requested in this Application are (Exhibit E, Dckt. 228):

| Description of Cost | Cost |
|----------------------------|-------------|
| Records | \$174.00 |
| Postage | \$212.79 |
| Copies | \$435.00 |
| Service | \$1,739.50 |
| Orders | \$100.00 |
| Levy Fees | \$3,070.00 |
| Filing Fees | \$555.00 |

| | |
|---|-------------------|
| Appraisal Fees | \$1,275.00 |
| Total Costs Requested in Application | \$7,561.29 |

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$16,070.25 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$7,561.29 ^{FN.1.} are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

 FN.1. In the Motion, Applicant requests reimbursement for the expense of hiring an appraiser, expressly stating two appraisals were performed. Motion ¶ 7, Dckt. 225. The Billing Statement includes the following costs:

| | | |
|---------|-----------------------|--------|
| 1/23/17 | Appraisal Report Fee | 425.00 |
| 8/18/17 | Prop Appraisal Fee | 425.00 |
| 5/15/18 | Updated Appraisal Fee | 425.00 |

Exhibit E, Dckt. 228. In light of the modest amount of costs requested and it appearing there was an error on counsel's part, the court finds the entire costs lists in the Billing Statement are reasonable.

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

| | |
|--------------------|-------------|
| Fees | \$16,070.25 |
| Costs and Expenses | \$7,561.29 |

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 J. Cook (“Applicant”), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that David J. Cook is allowed the following fees and expenses as a professional of the Estate:

David J. Cook, a Professional employed by the Chapter 7 Trustee

Fees in the amount of \$16,070.25

Expenses in the amount of \$7,561.29,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Macdonald Fernandez LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 10, 2018, through April 25, 2019. The order of the court approving employment of Applicant was entered on January 10, 2018. Dckt. 193. Applicant requests fees in the amount of \$6,696.50 and costs in the amount of \$421.33.

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 Asset Investigation, Claims Analysis, Other Contested Matters, Relief From Stay Matters, Sale or Lease of Assets, and Fee Applications. The Estate has \$64,281.14 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.

Asset Investigation: Applicant spent 5.5 hours in this category. Applicant assisted with the analysis and administration of Estate assets, including with efforts to enforce the judgment.

Use, Sale or Lease of Assets: Applicant spent 5.2 hours in this category. Applicant assisted Trustee in selling the underlying real property by forcing a sale by the United States Marshal.

Claims Analysis and Objections: Applicant spent 2.3 hours in this category. Applicant assisted Trustee with analyzing and objecting to claims, and with obtaining Court approval of administrative expenses.

Relief from Stay: Applicant spent 3.7 hours in this category. Applicant assisted Trustee with motions for relief from automatic stay, including preparation of an opposition.

Other Adversary Proceedings: Applicant spent 4.8 hours in this category. Applicant assisted Trustee and special counsel in efforts to obtain an order to show cause regarding sale of the property, to enforce the judgment and generally to move the case to conclusion.

Fee Applications: Applicant spent 1.2 hours in this category. Applicant prepared fee applications in this case.

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 |
|--|-------------|--------------------|--|
| Reno F.R. Fernandez III | 22.7 | \$295.00 | \$6,696.50 |
| Total Fees for Period of Application | | | \$6,696.50 |

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$421.33 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|-------------------------------------|-------------|
| Photocopies | \$0.10 | \$80.80 |
| Postage | | \$61.53 |
| PACER | | \$53.60 |
| Attorney Services | | \$225.40 |
| Total Costs Requested in Application | | \$421.33 |

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 \$6,696.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

In the Application, most expenses for which reimbursement is sought are explained. A clear exception is the following expense:

BK Attorney Services - POS/ Trustee motion, notice of hearing, etc.

Application, Dckt. 220 at p. 17.5.

No information has been provided to the court explaining what these “attorney services” were and why they are listed as costs and not absorbed as part of the normal hourly fees. No explanation being provided and those costs not shown to be reasonable, the court disallows \$225.40 of the requested costs.

June 27, 2019 at 10:30 a.m.

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First and Final Costs in the amount of \$195.93 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

| | |
|--------------------|------------|
| Fees | \$6,696.50 |
| Costs and Expenses | \$195.93 |

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 Macdonald Fernandez LLP (“Applicant”), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez LLP, Professional employed by the Chapter 7 Trustee
Fees in the amount of \$6,696.50
Expenses in the amount of \$195.93,

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

IT IS FURTHER ORDERED that the costs of \$225.40 are not allowed by the court.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

Atherton & Associates, LLP, the Accountant ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 24, 2019, through June 5, 2019. The order of the court approving employment of Applicant was entered on April 24, 2019. Dckt. 136. Applicant requests fees in the amount of \$2,493.00.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include Correspondence, Tax preparation, and Fee 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.

Correspondence: Applicant spent 1.1 hours in this category. Applicant corresponded with Client regarding tax consequences.

Tax preparation: Applicant spent 10.60 hours in this category. Applicant prepared the Estate's tax returns.

Fee Application: Applicant spent .60 hours in this category. Applicant prepared this fee application.

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

| Names of Professionals and Experience | Time | Hourly Rate | Total Fees Computed Based on Time and Hourly Rate |
|--|-------------|--------------------|--|
| Maria T. Stokman, CPA | 9.90 | \$230.00 | \$2,277.00 |
| Tyler Wookey | 2.40 | \$90.00 | \$216.00 |
| Total Fees for Period of Application | | | \$2,493.00 |

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 \$2,493.00 are approved

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

The court authorizes the Chapter 7 Trustee to pay the fees allowed by the court.

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

| | |
|------|------------|
| Fees | \$2,493.00 |
|------|------------|

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

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

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

The Motion for Allowance of Fees and Expenses filed by Atherton & Associates, LLP (“Applicant”), Accountant for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Atherton & Associates, LLP is allowed the following fees and expenses as a professional of the Estate:

Maria Stokman, Professional employed by the Chapter 7 Trustee
Fees in the amount of \$2,493.00

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2019. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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|---|
| <p>The Motion for Approval of Compromise is granted.</p> |
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Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the debtors' parents and grandparents, Judy Wahler, Ryan Wahler, and Doro Sligar (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement are a set of preferential payments made by debtors, Christopher and Kelsey Sligar ("Debtor") in January 2018, totaling \$2,800.00.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms:

- A. Settlor shall pay to Movant \$2,800.00.
- B. Movant shall release all claims against Settlor.

DISCUSSION

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the probability of success in the present type of litigation is high because the settlement recovers the same amount disbursed as a preference, and because there is no apparent defense.

Movant presented evidence that payments totaling \$2,800.00 were made to Settlor on her claim within 1 year of filing this case. Declaration ¶ 2, Dckt. 21. Therefore, the probability of success appears high and this factor supports settlement.

Difficulties in Collection

Movant argues collection is not an issue because of the settlement.

Movant misunderstands this factor. What is solicited is how difficult collection would be after a successful judgement on the merits. The court has not been provided evidence as to whether Settlor has reachable assets. However, based on the modest settlement amount the court finds as a practical matter that any effort to enforce the judgement would quickly diminish the recovery. Therefore, this factor weighs in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant (apparently determining this factor is not important) argues “the litigation would be a mix of law and facts. Having received settlement funds, this factor waives [sic] in favor of settlement.”

While Movant cannot be bothered to provide analysis here, the court readily determines that the litigation herein does not appear complex. The facts are straight forward: Settlor received payment on

Settlor's claims within a year of Debtor filing this case. The litigation would likely resolve very quickly and not result in great expense. Therefore, this factor weighs against settlement.

Paramount Interest of Creditors

Movant argues this settlement is reasonable and in her business judgement.

Here, the settlement obtains exactly what Movant, on the behalf of the Estate, would recover if successful at trial. Therefore, it is clearly in the interest of creditors to accept the settlement and prevent further cost.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because obtains the same outcome that would be received in successful judgement while avoiding further expense. The Motion is granted.

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

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

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

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Judy and Ryan Wahler and Doro Sligar (collectively "Settlor") is granted, and the respective rights and interests of the parties are settled on the following terms:

- A. Settlor shall pay to Movant \$2,800.00.
- B. Movant shall release all claims against Settlor.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on May 14, 2019. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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| <p>The Motion for Approval of Compromise is granted.</p> |
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Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with debtor's daughter, Christy Ray ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to a \$5,000.00 preferential payment made by the debtors, Robert Schauer and Patricia Schauer ("Debtor") to Settlor.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms:

- A. Settlor shall pay Movant \$4,442.00.
- B. Movant shall release all claims against Settlor.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is

appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the probability of success in the present type of litigation is high because the settlement recovers the same amount disbursed as a preference, and because there is no apparent defense.

Movant presented evidence that payments totaling \$2,800.00 were made to Settlor on her claim within 1 year of filing this case. Declaration ¶ 2, Dckt. 39. Therefore, the probability of success appears high and this factor supports settlement.

Difficulties in Collection

Movant argues collection is not an issue because of the settlement.

Movant misunderstands this factor. What is solicited is how difficult collection would be after a successful judgement on the merits. The court has not been provided evidence as to whether Settlor has reachable assets. However, based on the modest settlement amount the court finds as a practical matter that any effort to enforce the judgement would quickly diminish the recovery. Therefore, this factor weighs in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant (apparently determining this factor is not important) argues “the litigation would be a mix of law and facts. Having received settlement funds, this factor waives [sic] in favor of settlement.”

While Movant cannot be bothered to provide analysis here, the court readily determines that the litigation herein does not appear complex. The facts are straight forward: Settlor received payment on Settlor’s claims within a year of Debtor filing this case. The litigation would likely resolve very quickly and not result in great expense. Therefore, this factor weighs against settlement.

Paramount Interest of Creditors

Movant argues this settlement is reasonable and in her business judgement.

Here, the settlement obtains substantially all of what Movant, on the behalf of the Estate, would recover if successful at trial. Therefore, it is clearly in the interest of creditors to accept the settlement and prevent further cost.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Movant would recover substantially all of what would be obtained on a successful judgement without incurring further cost. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Christy Ray (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the following terms:

- A. Settlor shall pay Movant \$4,442.00.
- B. Movant shall release all claims against Settlor.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2019. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §363. Here, Movant proposes to sell the nonexempt interest in the debtor, Melinda Broome's ("Debtor"), real property commonly known as 925 Olive Street, Oakdale California ("Property").

On Schedule A Debtor values the Property at \$242,518.00. Dckt. 1. The Property is encumbered by liens amounting to \$130,747.42 and Debtor claimed on Schedule C an exemption of \$100,000.00 pursuant to California Code of Civil Procedure section 704.730. *Id.*

Movant employed the services of Bob Brazeal, who determined the Property has a fair market value of \$310,000.00, which higher asserted value results in \$55,050.20 in unexempt equity.

The proposed purchaser of the Property is Debtor and the terms of the sale are:

- A. Debtor shall pay \$50,000.00 within 15 days of the court's approval of the sale.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the best value for the Estate's nonexempt interest in the Estate will be achieved. After accounting for the costs of open market sale, payment of liens on the Property and the Debtor's exemption, it is unlikely the estate would recover an amount greater than the proposed \$50,000.00.

Therefore, the Motion is granted.

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

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

The Motion to Sell Property filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Garry Farrar, the Chapter 7, is authorized to sell pursuant to 11 U.S.C. § 363(b) to the debtor, Melinda Broome or nominee ("Buyer"), the Estate's nonexempt interest in Debtor's real property commonly known as 925 Olive Street, Oakdale California ("Property"), on the following terms:

- A. The Estate's nonexempt interest in the Property shall be sold to Buyer for \$50,000.00 within 15 days of entry of this Order.

FINAL RULINGS

16. [19-90122-E-11](#)
[MF-23](#)

MIKE TAMANA FREIGHT
LINES, LLC
Matt Olson

MOTION TO EMPLOY JAMES R.
ARNOLD AS SPECIAL COUNSEL
AND/OR MOTION TO PAY
5-28-19 [\[290\]](#)

Final Ruling: No appearance at the June 27, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 28, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("Debtor in Possession"), seeks to employ James R. Arnold dba The Arnold Law Practice as special counsel ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

Debtor in Possession argues that Counsel's appointment and retention is necessary to defend Debtor in Possession in state court litigation titled *People v. Mike Tamana Freight Lines LLC*, Case No. CU19-083663 (the "State Court Litigation"), currently pending before the Superior Court of California for the County of Nevada. Counsel's advice is asserted to be essential for Debtor in Possession to meet its fiduciary duties to defend the assets of and resolve claims against the Estate.

Counsel requires that the Debtor in Possession pay a post-petition retainer of \$20,000.00, and has agreed to the following hourly rates:

Principal \$425.00 per hour
Counsels \$350.00 to \$400.00 per hour

Associate Attorneys \$195.00 to \$225.00 per hour
Paralegals \$135.00 to \$155.00 per hour
Law Clerks \$95.00 per hour
Case Clerk \$45.00 per hour

The Declaration of James R. Arnold provides testimony he is a licensed attorney in the State of California and understands that his representation is limited to defending the State Court Litigation and to advising Debtor in Possession on the potential settlement of the State Court Litigation. Declaration, Dckt. 292. He further testifies as to his experience in applicable law matters, and that Counsel does not represent or hold any interest adverse to Debtor or to the Estate. *Id.*

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ James R. Arnold as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Motion to Employ James R. Arnold as Special Litigation Counsel for the Debtor in Possession and to Pay a Post-Petition Retainer filed Dckt. 290. Approval of the fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ James R. Arnold dba The Arnold Law Practice as Counsel for Debtor in Possession.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay Counsel \$20,000.00 from Estate funds as a retainer.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

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| 17. <u>18-90030-E-11</u> <u>19-9008</u> | FILBIN LAND & CATTLE CO., INC. MF-1 Matt Olson | MOTION TO APPROVE STIPULATION TO SET ASIDE ENTRY OF DEFAULT 5-31-19 <u>[17]</u> |
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**FILBIN LAND & CATTLE CO., INC.
V. FUEL SOURCE, INC.**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 25, 2019 hearing is required.

Filbin Land & Cattle Co., Inc. having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion To Approve Stipulation was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the June 27, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 9, 2019. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$335.00 due on May 24, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

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

The Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.