

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

June 27, 2024 at 10:30 a.m.

1. [22-90415](#)-E-7  
[BLF](#)-10

**JOHN MENDOZA**  
Peter Macaluso

**MOTION TO APPROVE ADDITIONAL  
FUNDING OF LINE OF CREDIT  
6-6-24 [\[355\]](#)**

1 thru 2

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 to Incur Debt is granted.**

Gary Farrar, the Chapter 7 Trustee ("Movant") seeks permission to obtain postpetition financing in the form of an additional line of credit. The Motion sets forth the facts and requested relief as follows:

1. Creditor WWJP 2021-4 LP (“Creditor”) obtained a judgment against John Mendoza (“Debtor”) in 2015 and recorded the judgment against all of Debtor’s Scheduled property. Creditor’s judgment is in the amount of \$2,150,000. Mot. 2:17-23, Docket 355.
2. The Scheduled property is as follows:
  - a. a vacant lot located at 12539 Quail Drive, Placida, Fla. 33946 (“Vacant Lot”);
  - b. a rental house located at 1035 W. 18th Street, Merced, Ca. 95349 (1035 18th Street Property”);
  - c. a commercial building located at 115 East Green Street, Marshall, Mich. 49068 (“Michigan Property”);
  - d. a residence located at 23955 Cedar Hill Lane, Twain Harte, Ca. 95383 (“Twain Harte Residence”); and
  - e. a rental house located at 1027 W. 18th Street, Merced, Ca. 95340 (1027 18th Street Property”).

*Id.* at 2:3-16.
3. Debtor confirmed at the 341 Meeting that he transferred some of these items of real property to La Estrella LLC prepetition, which is owned by Debtor’s sister or daughter. *Id.* at 2:24-27.
4. Mr. Farrar filed an application to employ special counsel Jeffrey Golden of Goodrich LLP (“Special Counsel”) to prosecute claims and recover the real property for the benefit of the Estate. This court authorized Special Counsel’s employment on May 19, 2023. *Id.* at 2:6-9.
5. Creditor’s judgment liens diminish recovery available to the Estate, so Movant and Creditor entered into a Case Administration Settlement Agreement where the parties agreed to a framework for the administration of Debtor’s Scheduled property. *Id.* at 2:17-19.
6. Pursuant to this Settlement Agreement, Creditor is to provide a line of credit funded with \$50,000 that Movant will use to make periodic payments to Special Counsel for fees and costs earned while pursuing claims against Debtor. The court entered an Order granting the Settlement Agreement on May 19, 2023. *Id.* at 3:20-4:5; *see* Order, Docket 74.
7. After approving Special Counsel’s prior two Interim Fee Applications, Creditor’s line of credit has been reduced from \$50,000 to \$3,890.09. *Id.* at 4:7-27.

8. Special Counsel has filed its Third Interim Motion for Allowance of Professional Fees and Costs in the amount of \$110,485 in fees and \$7,326.70 in costs, to be heard in conjunction with this Motion.
9. Therefore, Movant seeks to incur debt by opening a line of credit in the following manner:
  - a. Fund Creditor's account with another \$50,000 to immediately pay Special Counsel \$7,326.70 in costs and \$46,563.39 in fees for a total payment of \$53,890.09, and
  - b. The remainder of the fees in the amount of \$63,921.61 will be deferred until either:
    - i. Movant has obtained court approval for the sale of the Twain Harte Residence and distribution of the proceeds of that sale will be used to pay Special Counsel, or
    - ii. If a sale of the twain Harte Residence is not pending by August 30, 2024, then Movant is authorized to obtain further credit to pay Special Counsel in full.

*Id.* at 5:1-16.

Movant submits three Declarations in support. Dockets 357-59. Movant submits his own Declaration testifying to the facts alleged in the Motion, as well as stating he believes the requested credit is reasonable. Decl., Docket 357. Mr. Gold, Special Counsel, similarly testifies to the facts in the Motion. Decl., Docket 358. Finally, Anthony O'Neill, General Partner of Creditor, testifies in support of Motion. Decl., Docket 359.

## **APPLICABLE LAW**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral, if any, as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court's Order issued on May 18, 2023, authorizing the line of credit is as follows:

**IT IS ORDERED** that the Motion for Approval of the Case Administration Settlement Agreement between Movant and WVJP 2021-4, LP ("Creditor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit in support of the Motion (Ex. B).

**IT IS FURTHER ORDERED** that as part of the Approval of the Case Administration Settlement Agreement the court, pursuant to 11 U.S.C. § 364(b) authorizes Creditor to provide a \$50,000.00 line of credit for Trustee to use to pay the fees and expenses owing to the Golden Goodrich , LLP Law Firm as special counsel for the Trustee, as provided for by the court in the separate order authorizing such employment and for the payment of interim and final attorney's fees and costs for special counsel pursuant to 11 U.S.C. § 331, § 330.

Order, Docket 74. The operative provision in the Settlement Agreement filed as Exhibit B in support of the original motion is as follows:

(e) Trustee and WVJP have agreed that WVJP will provide a line of credit in the form of a segregated account funded with \$50,000 that Trustee will use to make periodic payments to Golden for fees and costs reasonably earned and incurred pursuing a Claim(s) against Debtor or a third party as follows: (1) Golden will issue invoices monthly to the Trustee and WVJP, (2) the Trustee will have 30 days within which to pay the invoice or render an objection, and (3) the Trustee will make monthly payments to Golden from the segregated account provided by WVJP. All fees and costs paid by Trustee on a monthly basis will be subject to interim approval pursuant to 11 U.S.C. § 331, and any amount paid to Golden later disallowed by the Bankruptcy Court will be promptly returned to Trustee and the Estate, and to WVJP if necessary.

Ex. B, Docket 56.

## **DISCUSSION**

The Motion is unclear as to whether Movant is seeking to change the original line of credit from \$50,000 to \$100,000, or if Movant is asking for a new, separate line of credit under the same terms originally approved between Movant and Creditor. Of note, the originally approved Settlement Agreement did not authorize refilling the \$50,000 line of credit. Therefore, the court construes this Motion to seek court approval for establishing a second line of credit under the same terms and conditions regarding the originally approved line of credit.

Movant will need to file a separate motion to seek compensation for the deferred amount of fees in the amount of \$63,921.61 as the court declines to rule on the deferred fees here.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Movant is able to fund Special Counsel's fees for work related to recovery assets on behalf of the Estate. The court is able to use the originally agreed upon financing agreement for reference in granting this Motion. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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

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

The Motion to Incur Debt 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 the Motion is granted, and Movant is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 56. ~~This new line of credit will be identical in terms to the court’s Order approving the original line of credit in the amount of \$50,000 to be funded by creditor WWJP 2021-4 LP (“Creditor”) and shall be used by Movant to pay Jeffrey Golden of Goodrich LLP’s (“Special Counsel”) fees and costs associated with work recovering assets on behalf of the Estate. See Order, Docket 74. Payment of Special Counsel fees is subject to court approval pursuant to 11 U.S.C. §§ 330, 331.~~

~~No other or additional relief is granted.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 6, 2024. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Golden Goodrich LLP, the Special Counsel (“Applicant”) for Gary Farrar, the Chapter 7 Trustee (“Client,” “Trustee”), makes a Third Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2023, through April 30, 2024. The order of the court approving employment of Applicant was entered on May 19, 2023. Dckt. 75. Applicant requests fees in the amount of \$110,485 and costs in the amount of \$7,326.70.

Trustee submitted a Declaration in support at Docket 361. Trustee states he has reviewed this Application and has no objection. *Id.*

#### 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 investigated potential undisclosed assets, (ii) conducted 2004 examinations, (iii) prosecuted a 727 action, (iv) prepared and filed a complaint for fraudulent transfer against the Debtor and related persons and entities, and (v) advised the Trustee on these matters. Mot. 2:4-7, Docket 349. 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 Analysis and Recovery: Applicant spent 35.40 hours in this category at a blended rate of \$597 per hour. Applicant reviewed valuations and comparables relating to the Debtor John Mendoza’s (“Debtor”) real properties. Applicant proceeded to subpoena the remaining Examinees even though it appeared several of them had been evading service from the process servers.

Applicant prepared for and appeared at the Debtor’s depositions which were held on December 8, 2023 and March 7, 2024 Ms. Mendoza’s examination was rescheduled to January 11, 2024 and to January 15, 2024. Applicant prepared for and appeared at Ms. Mendoza’s deposition which was held on January 15, 2024. There have been multiple follow ups and conversations with her counsel regarding additional information and documents.

Applicant prepared for the examination of Lupe Martin; however, she failed to comply with the subpoena to appear. Applicant prepared correspondence to Ms. Martin regarding her failure to appear for examination and drafted a motion to compel her appearance. To date, Ms. Martin has not appeared for her deposition. Ms. Martin now has counsel and will be answering the complaint. Applicant spoke to Ms. Martin and her counsel and discussed various stipulations. Her deposition should be held in early June 2024. Applicant has prepared for her deposition as well. Mot. 9:6-11, Docket 349.

Litigation: Applicant spent 174.90 hours in this category at a blended rate of \$468.84. Applicant reviewed court-mandated conferences, calculated litigation deadlines, participated in a discovery conference, reviewed the Debtor’s status report, prepared a joint status report, discovery plan and initial disclosures, researched additional parties, prepared responses to interrogatories, requests for admissions and production of documents.



Applicant prepared and served the Trustee's initial disclosures on December 28, 2023. Applicant conferred with Defendant's counsel, prepared the Scheduling Conference Statement and Discovery Plan which was filed on January 2, 2024 (Adv., Docket 18), and prepared for and appeared at the status conference held on January 4, 2024 at 2:00 p.m. Applicant reviewed the Scheduling Order (Adv. Docket 22) entered by the Court on January 9, 2024, which established a schedule for the Adversary Proceeding and set a pretrial conference for September 18, 2024 at 2:00 p.m. Applicant has been preparing for a summary judgment and trial in this matter as well as pre-trial motions and additional discovery. Mot. at 10:24-11:12, Docket 349.

In this category, Applicant also prepared Trustee's complaint for Fraudulent Transfer, Constructive Trust, Resulting Trust, Unjust Enrichment, Accounting and Declaratory Relief ("Fraudulent Transfer Complaint") which was filed against John Pierre Mendoza, La Estrella Enterprises, LLC, Lupe Martin and Jenae-Desiree Mendoza ("Defendants") on March 28, 2024, commencing adv. no. 9:24-ap-09004 ("Fraudulent Transfer Adversary Proceeding"). Based on Applicant's investigation, the Fraudulent Transfer Adversary Proceeding alleges that the Debtor transferred numerous properties either by fraudulent transfer and/or by transfer of mere legal title while retaining beneficial ownership and control over said properties. Mot. at 14:20-23, Docket 349.

Employment/Fee Applications: Applicant spent 11 hours in this category at a blended rate of \$253.18. Applicant finalized the Second Application and related filings and prepared for and appeared at the hearing held on February 22, 2024, at which time the Court approved the Second Application. The Firm also began preparing this Application. *Id.* at 14:17-20.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Jeffrey I. Golden, Attorney	89.0	\$600.00	\$53,400.00
Beth E. Gaschen, Attorney	19.60	\$600.00	\$11,760.00
Michael R. Adele, Attorney	50.50	\$600.00	\$30,300.00
Claudia M. Yoshonis, Paralegal	39.50	\$250.00	\$9,875.00
Cynthia B. Meeker, Paralegal	12.30	\$250.00	\$3,075.00
Gabrielle Roosevelt, Paralegal	8.30	\$250.00	\$2,075.00
<b>Total Fees for Period of Application</b>			<b>\$110,485.00</b>

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

<b>Application</b>	<b>Interim Approved Fees</b>	<b>Interim Fees Paid</b>
First Interim	\$13,860.00	\$13,860.00
Second Interim	\$28,240.00	\$28,240.00
<b>Total Interim Fees Approved and Paid Pursuant to 11 U.S.C. §§ 330, 331</b>	\$42,100.00	

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$7,326.70 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$4,009.91.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Filing fees	-----	\$350.00
Federal Express	-----	\$49.60
Depositions and transcripts	-----	\$6,871.30
Online research, CourtDrive and PACER	-----	\$55.80
<b>Total Costs Requested in Application</b>		\$7,326.70

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Discussion of Fees Requested, Hourly Rates, and Benefit for the Bankruptcy Estate**

In reviewing this Bankruptcy Case, there have been substantial legal fees incurred. In this latest Application, it appears that the legal services billing is being done by more senior partners in Special Counsel's law firm, with little associate or paralegal assistance.

Though the court recognizes the challenges created by Debtor pre-petition, the Trustee and his special counsel now have a very focused federal forum to diligently prosecute the Creditor's and the Estate's rights.

At the hearing, counsel for the Trustee addressed this cost-benefit question. ~~XXXXXXX~~

## Fees

### Hourly Fees

~~————— The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim Fees in the amount of \$110,485.00 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 Chapter 7 Trustee from the available funds of the Estate.~~

### Costs & Expenses

Third Interim Costs in the amount of \$7,326.70 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate.

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

<del>————— Fees</del>	<del>————— \$110,485.00</del>
<del>————— Costs and Expenses</del>	<del>————— \$7,326.70</del>

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 Golden Goodrich LLP (“Applicant”), Special Counsel for Gary Farrar, the Chapter7 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 Golden Goodrich LLP is allowed the following fees and expenses as a professional of the Estate:

~~————— Golden Goodrich LLP, Professional employed by the Chapter 7 Trustee~~

<del>————— Fees</del>	<del>————— \$110,485.00</del>
<del>————— Costs and Expenses</del>	<del>————— \$7,326.70,</del>

~~————— 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. The Trustee is authorized to pay ~~XXXXXXX~~ % of the above approved fees.~~

3. [18-90029-E-11](#)  
[FWP-30](#)

JEFFERY ARAMBEL  
Pro Se

**MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING PLAN ADMINISTRATOR  
TO MAKE A POST-CONFIRMATION  
DISTRIBUTION TO SECURED  
CREDITOR PURSUANT TO 11 U.S.C  
105(A) AND PLAN.  
5-23-24 [\[1981\]](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, other parties in interest, and Office of the United States Trustee on May 23, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion for Authorization to Make Post-Confirmation Distribution to  
Secured Creditor is xxxxxxx.**

Focus Management Group USA, Inc. ("Plan Administrator") moves this court for an order authorizing it to make a post-confirmation distribution to SBN V AG I LLC ("Summit") in the amount of \$1,500,000.00 from approximately \$3.3 million of estate funds held as Summit's cash collateral. The Motion is brought pursuant to Federal Rule of Bankruptcy Procedure 3021, the Confirmed Plan at sections 6.1 and 7.3.3, 11 U.S.C. § 105(a), and 11 U.S.C. §§ 363(b), 363(e), and 541. *See also* 9 Collier 3021.01 (A.N. Resnick and H. J. Sommer, eds. 16th ed. 2018) (emphasis added).

The Motion provides a detailed factual background of the case, updating the court on the events that have transpired over the seven years this case has been ongoing. Notwithstanding certain nonjudicial foreclosure sales that occurred during the life of this case, Summit is the largest secured creditor in this case, asserting a secured claim in excess of \$45,000,000. See POCs 22-2, 23-1. Summit's cash collateral has

been used to fund plan expenses in excess of \$1,000,000. Mot. 7:17, Docket 1981. Summit's cash collateral has been used in an effort to realize some equity and dividend payout for general unsecured creditors.

However, according to Plan Administrator, assets of the Estate did not have any equity value to generate an unencumbered revenue or sale proceeds for the Estate. *Id.* at 21-22. Therefore, Summit has agreed that, provided its distribution of \$1,500,000 be approved now, it will allow \$200,000 of its cash collateral to go toward general unsecured claims in the case. *Id.* at 8:14-20. The \$1,500,000 proposed distribution to Summit will come from a tax reserve account containing funds approximately in the amount of \$3,124,530, therefore leaving approximately \$1,500,000 in reserve in case the need arise to use these tax funds. *Id.* at 6:19-27.

Plan administrator has submitted the Declaration of Juanita Schwarzkopf to authenticate these facts alleged in the Motion. Decl., Docket 1983. Ms. Schwarzkopf testifies that "[i]t is the Plan Administrator's opinion that the proposed post-confirmation distribution of \$1.5 million from the Tax Reserve account is in the best interest of the estate. . . The Plan Administrator does not currently anticipate the need to use those remaining funds for anything other than distributions. Nonetheless, the Plan Administrator has determined, and Summit has consented to the continued retention of the remaining balance of funds as a potential funding source should the need arise, provided that this interim distribution to Summit is approved." *Id.* at 6:12-25.

## **DEBTOR'S RESPONSE**

On June 13, 2024, Debtor Jeffery E. Arambel ("Debtor") filed a Response to the Motion. Docket 1990. Debtor states that the tax professional for the Plan Administrator and Bankruptcy Estate, Jay Crom, apparently has not filed tax returns for the Estate for the tax year 2020. Resp. 2:3-4, Docket 1990. According to Debtor, Debtor received a notice that he was audited by the IRS and found to be liable for income taxes and penalties and interest for a total amount of \$3,419,274.35 due to the unfiled 2020 tax returns. *Id.* at 2:6-10.

The Plan defines Plan Expenses as those "incurred after the Effective Date in connection with administration of the Plan, including taxes," and gives the Plan Administrator the duty to "[i]ncur and pay or reimburse Plan Expenses related to the Plan Assets." Plan ¶ 1.65 (defining "Plan Expenses"), at 9; *id.* ¶ 7.3.3 (listing powers and authority of Plan Administrator), at 30, Docket 860. Debtor therefore argues that the Plan administrator is obligated to retain funds necessary to pay this additional tax expense.

Debtor also argues that it is not clear which liens are released by this proposed distribution. Therefore, Debtor requests that the funds should be applied to fully pay the Plan Funding Claim described in the Motion, and that the corresponding collateral interest is released. Resp. 3:2-7, Docket 1990. The Plan Funding Claim is in the amount of \$1,134,667, which includes the initial principal amount of Plan Funding Loan plus interest at 10% per annum and expenditures of Other Cash Collateral in excess of \$500,000. Mot. 4:18-19, Docket 1981.

Debtor concludes the Response by saying the court should not rule on this Motion until the tax liability is decided, and "[w]hile Arambel does not presently oppose the Motion, he reserves the right to do so should facts be discovered justifying such opposition." Resp. 3:2-7, Docket 1990.

Debtor submits the IRS' notice of tax liability as Exhibit A in support of the Response. Docket 1992. Debtor also submits his own Declaration in support, authenticating the facts alleged in the Motion.

However, Debtor states the tax year for which he is liable is 2022 in his Declaration (*Id.* at 2:3-5), while the IRS notice of tax liability form states the year as 2020.

At the hearing, **XXXXXXX**

## **PLAN ADMINISTRATOR'S REPLY**

Plan Administrator replies that, in regard to the tax notice, that liability is not a liability of the Estate. Reply 2:7-8, Docket 1996. The Estate has its own tax ID number and is considered to be a separate taxable estate from Arambel personally.

On its face, the Personal Tax Notice is issued to Arambel personally under his personal social security number. It is not directed to the Estate or the Estate's tax ID number. *Id.* at 2:9-12. Moreover, the Response wrongly asserts that the Plan Administrator failed to file tax returns for 2020. The Plan Administrator has timely filed the state and federal tax returns for the tax years ending November 30, 2019, 2020, 2021, 2022, and 2023 required to be filed under the Estate's tax ID number. *Id.* at 2:13-16.

Furthermore, Debtor was in possession of the tax notice as of August 2023. Reply 2:28-3:1, Docket 1996. Debtor personally appeared before this court at an evidentiary hearing in the fall of 2023 where the Plan Administrator raised concerns about potential tax issues and Debtor failed to make any mention or disclosure of the Personal Tax Notice. *Id.* at 3:5-8. Debtor must provide the following:

- a. His personal 2020 tax returns;
- b. Any Notice(s) of Proposed Assessment from the IRS;
- c. Any response to any Notice(s) of Proposed Assessment from the IRS;
- d. Any Final Assessment Notice from the IRS;
- e. The Audit Report for the 2020 return;
- f. Any balance due notices from the IRS;
- g. Any requests for information from the IRS; and
- h. Any other documents supporting his contention that any of the amounts due under the Personal Tax Notice are obligations of the Estate.

*Id.* at 3:15-23. These documents should be provided so that the Plan Administrator can verify that the Personal Tax Notice does not impact the Estate and that the Plan Administrator may proceed with the proposed distribution to Summit, as the Plan Administrator does not assume any responsibility regarding Debtor's personal tax matters.

Regarding how the \$1,500,000 should be applied, Plan Administrator states that the Estate's tax reserve account holds \$1,579,703 in hold backs from the proceeds of Summit's and Brighthouse's collateral. The Plan Administrator intends to make the proposed \$1,500,000 distribution to Summit from these funds since the Plan Administrator in consultation with the Estate's tax professional has determined that these

holdbacks are not necessary. *Id.* at 4:10-14. As proceeds from the sale of property secured by Summit loans, the distribution of such hold back funds should be applied to the loans secured by the property that was sold, not the Plan Funding Loan as Arambel suggests. *Id.* at 4:14-17.

Jay Crom submits a Declaration in support where he testifies that he did indeed file the tax return for the year 2020. Decl. 2:9, Docket 1997.

The Declaration of Juanita Schwarzkopf is also submitted where she testifies that the tax holdbacks are no longer necessary, meaning the proposed distribution to Summit can be made in the best interest of the Estate. Decl. 3:25-4:2, Docket 1998. She also testifies that Debtor should be compelled to submit the above mentioned documents. *Id.* at 3:15-24.

## **APPLICABLE LAW**

Fed. R. Bankr. P. 3021 states:

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution, unless a different time is fixed by the plan or the order confirming the plan.

Of note, Rule 3021 does not say when distribution should occur, except that it should be after. . . The timing and manner of distribution typically are set out in the confirmed plan. Rule 3021 gives plan drafters flexibility to arrange distribution in accordance with the needs of the case. 9 COLLIER ON BANKRUPTCY ¶ 3021.01.

In this case, the confirmed Plan states:

The Plan Administrator shall be specifically empowered and authorized to do the following on behalf of the Reorganizing Debtor or, as applicable, the Estate... (j) Make or cause to be made Distributions to Allowed Secured Claims... pursuant to Sections 6.1, 6.2, and 6.6 of the Plan and the other terms of the Plan...

Confirmed Plan § 7.3.3(j), Docket 860.

## **DISCUSSION**

In this case it appears to the court that this type of distribution is permissible under the Bankruptcy Code as well as the confirmed Plan. However, what is holding up the distribution is this sizeable tax liability Debtor has now presented to the court, as well as how the distribution will be applied. Debtor has not presented sufficient information to show if this liability is indeed a liability of the Estate, or if it is a liability of Debtor in his personal capacity.

Moreover, Debtor and Plan Administrator continue to disagree how the funds should be applied, Debtor stating the funds should be applied to the Plan Funding Claim and Plan Administrator stating the distribution should be applied to the loans secured by the property that was sold.

At the hearing, **XXXXXXX**

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 Authorization to Make Post-Confirmation Distribution to Secured Creditor filed by Focus Management Group USA, Inc. (“Plan Administrator”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **XXXXXXX**.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, all creditors and parties in interest, other parties in interest, and Office of the United States Trustee on May 24, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted, and the lien is avoided in its entirety.**

This Motion requests an order avoiding the judicial lien of The Best Service Co. Inc., d/b/a TBSC Holding Company ("Creditor") against property of the debtor, Pedro Mares Ruiz ("Debtor") commonly known as 1924 Mulberry Way, Hughson, California 95326 in Stanislaus County ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,872.81. Ex. A, Docket 12. An abstract of judgment was recorded with Stanislaus County on May 10, 2016, that encumbers the Property. Ex. B, Docket 12.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$460,000.00 as of the petition date. Voluntary Pet. For Bankr. 11, Docket 1. However, in his Motion to Avoid Lien and supporting Declaration, the Debtor states that the fair market value of the Property is 375,000.00. Decl. 2:12-13, Docket 11. The Debtor does not explain what caused such a dramatic drop in the price of the house since the time of filing, and there is no Amended or Supplemental Schedule on file that reflects this decrease in the Property's price.

The unavoidable consensual liens that total \$87,547.00 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D 19, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$372,453.00 on Schedule C. Schedule C 17, Docket 1.

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

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Pedro Mares Ruiz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of The Best Service Co. Inc., d/b/a TBSC Holding Company ("Creditor"), California Superior Court for Stanislaus County Case No. 2016483, recorded on May 10, 2016, Document No. DOC-2016-0033974-00, with the Stanislaus County Recorder, against the real property commonly known as 1924 Mulberry Way, Hughson, California 95326 in Stanislaus County, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

# FINAL RULINGS

5. [18-90029-E-11](#)      JEFFERY ARAMBEL      CONTINUED MOTION TO USE CASH  
[FWP-28](#)      Pro Se      COLLATERAL  
10-20-23 [[1927](#)]

**Final Ruling: No appearance at the June 27, 2024 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, 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.

No opposition was stated at the hearing.

**The Motion for Authority to Use Cash Collateral is continued to 10:30 a.m. on July 18, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.**

Supplemental Pleadings shall be filed by Movant on or before two weeks prior to the continued hearing date.

## June 27, 2024 Hearing

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report

with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as “cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). The proposed budget is as follows:

Arambel Cash Budget Plan of Conversion of Remaining Assets	Actual April 55	Actual May 56	June 57	July 58	August 59	September 60	Funeral Expense 13th Month	Cumulative Post January 2021 Period
Starting Cash	\$ 3,361,206	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 778,733	\$ 1,601,766
<b>Cash-In</b>								
Summit Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MetLife Funding	-	-	-	-	-	-	-	-
FLCC Deposit	-	-	-	-	-	-	-	500,390
Additional Funding/LBA Settlement	-	-	-	-	-	-	-	525,118
Farm Equipment Auction Net Proceeds	-	-	-	-	-	-	-	172,546
Property Tax Refunds - Stanislaus County	-	-	-	-	-	-	-	157,169
Crop Retainage/Coop Patronage	-	-	-	-	-	-	-	-
IRS/CA Tax Refunds	-	-	-	-	-	-	-	1,544,827
Rental Income	-	-	-	-	-	-	-	17,928
Property Sales	-	-	-	-	-	-	-	-
<b>Total Cash-In</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,917,978
<b>Cash-Out</b>								
<b>Personal Expenses</b>								
<b>Total Personal</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Farm Expenses</b>								
Lot Line Adj and Other Asset Admin	145	183	170	170	170	170	2,000	13,496
Reorganizing Debtor's Professionals	-	-	-	-	-	-	-	11,645
<b>Total Farm</b>	\$ 145	\$ 183	\$ 170	\$ 170	\$ 170	\$ 170	\$ 2,000	\$ 25,141
<b>Plan Expenses</b>								
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,462
Property Taxes	10,991	-	-	-	-	-	10,000	218,861
Accountant	-	-	1,000	1,000	1,000	1,000	6,000	93,457
Plan Administrator's Attorneys	2,349	1,272	10,000	10,000	10,000	10,000	17,500	467,376
US Trustees Fees	500	-	-	500	-	-	-	32,730
Plan Administrator Fees	2,901	3,061	7,500	7,500	7,500	7,500	20,000	549,168
Contingency Reserve	-	-	-	-	-	-	(903,030)	-
<b>Total Plan</b>	\$ 16,740	\$ 4,332	\$ 18,500	\$ 19,000	\$ 18,500	\$ 18,500	\$ (841,643)	\$ 1,374,053
<b>Sub-Total</b>	\$ 16,885	\$ 4,516	\$ 18,670	\$ 19,170	\$ 18,670	\$ 18,670	\$ (839,643)	\$ 1,399,194
<b>Accrued Professional Fees</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022 Income Tax	-	-	-	-	-	-	-	2,174
Unpaid Utilities	-	-	-	-	-	-	-	-
Class 2 Pre-Petition Property Taxes	-	-	-	-	-	-	-	-
Class 3 Cure Payments	-	-	-	-	-	-	-	-
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,174
<b>Property Sale Disbursements</b>								
Payment on Debt - Brighthouse	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment on Debt - Summit	-	-	-	1,500,000	-	-	1,418,376	2,918,376
Sale Expenses (Title, Escrow, Recording)	-	-	-	-	-	-	-	-
Property Taxes	-	-	-	-	-	-	-	-
Other Costs (Carve Out Unsecureds)	-	-	-	-	-	-	200,000	200,000
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ 1,500,000	\$ -	\$ -	\$ 1,618,376	\$ 3,118,376
<b>Total Cash-Out</b>	\$ 16,885	\$ 4,516	\$ 18,670	\$ 1,519,170	\$ 18,670	\$ 18,670	\$ 778,733	\$ 4,519,744
<b>Ending Cash</b>	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 1,764,625	\$ 0	\$ (0)
<b>Period Ending Cash Balance:</b>								
PA Operating Account	\$ 223,946	\$ 219,614	\$ 201,114	\$ 182,114	\$ 163,614	\$ 145,114	\$ (1,618,022)	-
PA Filbin Account	204	204	204	204	204	204	204	204
PA U.S. Trustee Fees Reserve	-	-	-	-	-	-	-	-
PA 10% Holdback after \$2M to Summit	-	-	-	-	-	-	-	-
PA Tax Reserve Account	\$ 3,120,171	\$ 3,119,987	\$ 3,119,817	\$ 1,619,647	\$ 1,619,477	\$ 1,619,307	\$ 1,617,817	-
RD Checking/Petty Cash	-	-	-	-	-	-	-	-
<b>Period Ending Cash Balance</b>	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 1,764,625	\$ (0)	-

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V AG I LLC (“Summit”), being heard in conjunction with this Motion.

## REVIEW OF THE MOTION

Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC (“Summit”) for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit’s cash collateral constitutes the sole source of funds to operate Debtor’s business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### **Proposed Stipulation**

Summit entered into a stipulation with the Plan Administrator detailing how Summit’s cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit’s cash collateral, and Summit is willing to consent to the Plan Administrator’s use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

### **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continued the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

**January 11, 2024 Hearing**

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

**March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court's attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

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 Authority to Use Cash Collateral filed by Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Authority to Use Cash Collateral is continued to **10:30 a.m. on July 18, 2024**, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant on or before two weeks prior to the continued hearing date.

6 thru 7

**Final Ruling:** No appearance at the June 27, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 3, 2024. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted, and the lien is avoided in its entirety.**

This Motion requests an order avoiding the judicial lien of Citibank N.A. ("Creditor") against property of the debtor, Douglas Edward Stucker ("Debtor") commonly known as 5930 Hull Court, Riverbank, California 95367 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,250.31. Mot. 2:6-7, Docket 19. An abstract of judgment was recorded with Stanislaus County on March 20, 2023 that encumbers the Property. *Id.* at 2:8-11; Ex. B 11-13, Docket 22..

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$517,500.00 as of the petition date. Schedule A/B11, Docket 1. The first consensual lien held by Wells Fargo Home Mortgage totals \$238,466.53. Amended Schedule D 6, Docket 26. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of \$300,000.00 on Amended Schedule C. *Id.* at 1.



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

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Douglas Edward Stucker ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. CV-22-001394, recorded on March 20, 2023, Document No. 2023-0012357, with the Stanislaus County Recorder, against the real property commonly known as 5930 Hull Court, Riverbank, CA 95367, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the June 27, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on May 3, 2024. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted, and the lien is avoided in its entirety.**

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. (“Creditor”) against property of the debtor, Douglas Edward Stucker (“Debtor”) commonly known as 5930 Hull Court, Riverbank, CA 95367 (“Property”). Mot. to Avoid J. Lien 1:21-2:3, Docket 15.

On May 30, 2023, Wells Fargo Bank, N.A. obtained a judgment against Debtor for \$6,226.26. Mot. to Avoid J. Lien 2:12-17, Docket 15. An abstract of judgment was recorded with Stanislaus County on September 27, 2023 that encumbers the Property. *Id.*; Ex. C 14-17, Docket 24.

Pursuant to Debtor’s Schedule A/B, the subject real property, had an approximate value of \$517,500.00 as of the date the case was filed. Schedule A/B11, Docket 1. The first consensual lien held by Wells Fargo Home Mortgage totals \$238,466.53. Amended Schedule D 6, Docket 26. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of \$300,000.00 on Amended Schedule C. *Id.* at 1.

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

## **ISSUANCE OF A COURT-DRAFTED ORDER**

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Douglas Edward Stucker (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Wells Fargo Bank, N.A., California Superior Court for Stanislaus County Case No. cv-22-004572, recorded on September 27, 2023, Document No. 2023-0045666, with the Stanislaus County Recorder, against the real property commonly known as 5930 Hull Court, Riverbank, CA 95367, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. [23-90589-E-7](#)  
[BHS-1](#)  
8 thru 9

GREEN ACRES  
CONSTRUCTION, INC.  
Peter Macaluso

MOTION TO EMPLOY BARRY H.  
SPITZER AS ATTORNEY(S) AND/OR  
MOTION FOR COMPENSATION FOR  
BARRY H. SPITZER, TRUSTEES  
ATTORNEY(S)  
5-16-24 [\[15\]](#)

**Final Ruling:** No appearance at the June 27, 2024 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, attorneys of record who have appeared in the Bankruptcy Case, the Adversary Proceedings, or contested matter, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2024. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Employ and Motion for Authorization of Professional’s Fees is granted.**

Nikki Farris (“Trustee”) seeks to employ Law Office of Barry H. Spitzer (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in preparing a Motion for Order (1) Authorizing Employment of Auctioneer to Sell Personal Property, (2) to Sell Assets by Auction, (3) to Waive 14-day Stay, and (4) to Compensate Auctioneer from Proceeds of Auction of Personal Property, as well as assisting the Trustee on other matters related to the estate. Mot. to Employ 1:25-2:1, Docket 15.

Trustee argues that Counsel’s appointment and retention is necessary to handle the aforementioned matters, since Attorney is well qualified to do so. The Trustee prays that the court approve employment of Law Office of Barry H. Spitzer as her counsel, to perform the professional services required

by him as set forth in these pleadings, and further, that a flat fee of \$2,500.00 be approved for the professional time and expenses incurred by Attorney, payable from funds of the estate without further application. *Id.* At 2:11-16.

Barry H. Spitzer, a Founder of Law Office of Barry H. Spitzer, testifies that he is an attorney licensed to practice in the State of California and admitted to practice before this Court. Barry H. Spitzer maintains an office at 2150 River Plaza Drive, Suite 140, Sacramento, California 95833, a general practice with an emphasis on bankruptcy. Barry H. Spitzer testifies to being familiar with the Bankruptcy Code, the Bankruptcy Rules of Practice and Procedure, and the Local Bankruptcy Rules promulgated by this Court. He is a 1992 graduate of the University of the Pacific, McGeorge School of Law and has represented creditors, debtors, and trustees in Chapters 7, 11, and 13 in the Eastern and Northern Districts of California since that time. Barry H. Spitzer also testifies to having conducted a conflict check which has revealed that he and his firm do not represent or hold any interest adverse to the Debtor, the Trustee, persons employed by the Office of the U.S. Trustee, creditors of the Debtor, any of the Debtor's accountants, or any other party in interest in or having an interest in this case. Decl., Docket 17.

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 Law Office of Barry H. Spitzer as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Motion to Employ filed as Docket 15.

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

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

The Motion to Employ and Motion for Authorization of Professional's Fees filed by Nikki Farris ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, effective May 27, 2024, and Trustee is authorized to employ Law Office of Barry H. Spitzer as Counsel for Trustee on the terms and conditions as set forth in the Motion to Employ filed as Docket 15.

**IT IS FURTHER ORDERED** that Barry H. Spitzer of the Law Office of Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

Barry H. Spitzer, Attorney for the Chapter 7 Trustee

Fees in the amount of \$2,500

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

**Final Ruling:** No appearance at the June 27, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Office of the United States Trustee, Attorneys of record who have appeared, creditors and parties in interest, persons who have filed a Request for Notice, and creditors and parties in interest, on May 16, 2024. By the court's calculation, 42 days' notice was provided. The court set the hearing for June 27, 2024. Docket 21.

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

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

2019 Ford F-450, VIN 1FDOW4HT8KED73213: Scheduled Value \$30,000.00

("Personal Property"). Mot. to Employ 1:21-2:7, Docket 20. The Personal Property is listed in Amended Schedule A / B filed by Debtor. Am. Schedule A/B 4, line 47.2, Docket 10. Trustee argues that Auctioneer's appointment and retention is necessary to facilitate a liquidation of the Personal Property and produce the highest and best return to the estate. Mot. 2:18-23, Docket 20.

The essential terms of the Employment Agreement are as follows:

- (a) The Auctioneer's commission of twenty percent (20%) will be charged to the estate and will be deducted from the gross sale proceeds.
- (b) Trustee will convey title to the Personal Property as is, where is.
- (c) Auctioneer will begin to advertise shortly after gaining court approval in this Motion.
- (d) Within 30 business days of the auction, the Auctioneer will remit payment to the Trustee the net sale proceeds.
- (e) Auctioneer will provide the asset sold, purchaser, and price received per FRBP 6004(f).

Mot. 2:13-7:10, Docket 20.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction is a full-service auction company providing auctions as well as liquidations of business and other financial assets. Decl. 2:13-4:9, Docket 23. The Auctioneer has extensive experience in assisting bankruptcy trustees similar to the Trustee. *Id.* at 2:11-12. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at 2:7-12.

## **DISCUSSION**

### **Motion to Employ and Authorization to Sell**

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Docket 24. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.



Auctioneer is authorized to sell a 2019 Ford F-450 (VIN 1FDOW4HT8KED73213) listed in Am. Schedule A/B 4, line 47.2, Docket 10.

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

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

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

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

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

Here, Trustee has estimated that a twenty percent broker’s commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Mot. to Employ, 4:11-28, Docket 20. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee.

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

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

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court

grant relief from the Rule as adopted by the United States Supreme Court because the waiver of the stay will make the Ford more marketable, as any potential bidder will want finality in buying the assets and the Debtor is a business that is no longer operating. Mot. to Employ 7:12-19, Docket 20.

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

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

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

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

**IT IS ORDERED** that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective June 27, 2024, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Docket 24.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the following items of personal Property at the auction as listed in Amended Schedule A / B filed by Debtor, at line 47.2, Docket 10:

2019 Ford F-450, VIN 1FDOW4HT8KED73213.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and that the Trustee is authorized to pay such fees from the sales proceeds. The allowance of such fees is subject to the provisions of 11 U.S.C. § 328.

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