

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**July 11, 2019 at 10:30 a.m.**

---

- |    |   |   |   |
|----|---|---|---|
| 1. | <a href="#"><u>17-26125-E-7</u></a><br><a href="#"><u>HSM-2</u></a> | <b>FIRST CAPITAL RETAIL,<br/>LLC</b><br><b>Gabriel Liberman</b> | <b>MOTION TO EMPLOY JEFFREY H.<br/>OCHRACH AS SPECIAL COUNSEL<br/>O.S.T.</b><br><b>6-25-19 <a href="#"><u>[515]</u></a></b> |
|----|---|---|---|

**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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2019. The court required notice be provided no later than June 25, 2019. Dckt. 522.

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

-----.

<b>The Motion to Employ is granted.</b>
---

The Chapter 7 Trustee, Kimberley Husted ("Trustee"), seeks to employ Jeffrey Ochrach, of Ochrach Law Group as special counsel ("Special Counsel") pursuant to Bankruptcy Code sections 328(a) and 330. Trustee] seeks the employment of Special Counsel to pursue potential claims against

the debtor, First Capital Retail, LLC's ("Debtor"), insiders and affiliates; current and former officers, directors, and shareholders; and financial advisors, auditors, legal counsel, brokers, financial institutions, and creditors.

Counsel will be responsible for investigation, analysis, and prosecution of potential claims.

In his Declaration, Jeffrey Ochrach testifies as to his experience and qualifications regarding litigation of this nature. Dckt. 517. Ochrach testifies further he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special 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 Special Counsel as an attorney for the Estate on the terms and conditions set forth in the Contingency Fee Agreement filed as Exhibit A, Dckt. 520. Approval of the contingency 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 Chapter 7 Trustee, Kimberley Husted ("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 Jeffrey Ochrach, of Ochrach Law Group as special counsel ("Special Counsel") for Trustee on the terms and conditions as set forth in the Contingency Fee Agreement filed as Exhibit A, Dckt. 520.

**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.

2.     [19-23392-E-11](#)     **HERBERT MILLER**     **ORDER TO SHOW CAUSE - FAILURE**  
                                  **Allen Hassan**                   **TO PAY FEES**  
  **6-12-19 [20]**

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

-----

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 14, 2019. The court computes that 27 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: \$1,717.00 due on May 29, 2019.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
--

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$1,717.00.

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**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 18, 2019. By the court's calculation, 23 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 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. At the hearing, -----

-----.

**The Motion for Authority to Use Cash Collateral is granted.**

The Chapter 7 Trustee, Eric Nims ("Movant"), moves for an order pursuant to 11 U.S.C. § 363(b)(1) approving the use of cash collateral from real property, commonly known as 2769 Barrington Terrace, Fremont, California ("Property").

Movant proposes to fully pay the claims in this case with the cash collateral. Movant argues that the creditors holding claims secured by the Property are adequately protected by an equity cushion. The cash collateral will be used to pay the modest amount of unsecured claims and the administrative expenses in this case, and allow the case to be closed without the liquidation of other assets (and the corresponding additional taxes that go with such liquidation).

#### **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. As a debtor in possession, the debtor in possession 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**

Movant has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for the payment in full of all claims in this case. The Motion is granted, and Movant is authorized to use the cash collateral to pay claims in this case.

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

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

The Motion for Authority to Use Cash Collateral filed by the Chapter 7 Trustee, Eric Nims (“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, pursuant to this order the cash collateral may be used to pay the Administrative Expenses, including those of professionals as allowed by the court, and Unsecured Claims in this case, in the aggregate amount not to exceed \$50,000.00, without further order of the court.

4. [17-25114-E-7](#)      **HSIN-SHAWN SHENG**      **MOTION TO PAY**  
[DNL-6](#)      **Richard Jare**      **6-18-19 [181]**

**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 18, 2019. By the court’s calculation, 23 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 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. At the hearing, -----

**The Motion to Pay is granted.**

The Chapter 7 Trustee, Eric Nims (“Movant”), moves for an order authorizing payment of the following unsecured claims in this case:

Capitol One Bank	\$7,533.70
Land Resource Management	\$720.00
Land Resource Management	\$874.00
Land Resource Management	\$644.00
Merrick Bank	\$1,004.89

Additionally, Movant requests authority to pay the arrearages on claims held by Wells Fargo Bank, N.A. and Chase Home Mortgage to the extent required by the court for usage of cash collateral.

This Motion has been brought in a series of motions intended to wrap up this Chapter 7 case. The present Motion addresses the amount of remaining claims to be paid in this case (which the Debtor has previously disputed) so they can be determined and administration of the case come to a conclusion.

A proof of claim has been filed for each of the unsecured claims sought to be paid herein. *See* Official Registry of Claims.

In light of the events that have transpired in this case and the conflict that has arisen, it appears that this Motion has been brought to ensure that Debtor has the opportunity in this surplus case to raise any issues concerning the claims filed before distribution is made thereon.

The Motion is granted, and Movant is authorized to pay from Estate funds the unsecured claims totaling \$10,6776.59.

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

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

The Motion for Authority to Use Cash Collateral filed by the Chapter 7 Trustee, Eric Nims (“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 the Chapter 7 Trustee is authorized to pay from Estate funds the following claims:

Capitol One Bank	\$7,533.70
Land Resource Management	\$720.00
Land Resource Management	\$874.00
Land Resource Management	\$644.00
Merrick Bank	\$1,004.89



**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 18, 2019. By the court's calculation, 23 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.**

Bachecki, Crom & Co., LLP, the Accountant ("Applicant") for Eric Nims, 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 19, 2019, through April 18, 2019. The order of the court approving employment of Applicant is effective February 19, 2019. Dckt. 143. Applicant requests fees in the amount of \$2,147.00 and costs in the amount of \$1,925.

#### **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 tax issue analysis. The Estate has \$43,000.00 of unencumbered monies to be administered as of the filing of the application. Declaration, Dckt. 196. 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 as the following services:

Consulting with Client regarding tax issues.

Preparing evaluation of real property of the Estate to assess tax liability from 1031 exchange.

Prepare Federal and California 2019 tax returns.

Prepare disclosure statements for tax returns.

Assist preparation of 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:

<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>
Jay Crom	2	\$525.00	\$1,050.00
Paula Law	1.1	\$370.00	\$407.00
Jason Tang	02.3	\$300.00	\$690.00
<b>Total Fees for Period of Application</b>			<b>\$2,147.00</b>

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of

\$19.25 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Cost</b>
Photocopies	\$10.40
Postage	\$8.85
<b>Total Costs Requested in Application</b>	\$19.25

## **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 \$2,147.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case .

### **Costs & Expenses**

First and Final Costs in the amount of \$19.25 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.

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

Applicant is allowed, and the Chapter 7 Trustee / Debtor in Possession / Plan Administrator under the confirmed plan] is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,147.00
Costs and Expenses	\$19.25

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 Bachecki, Crom & Co., LLP, the Accountant (“Applicant”) , Attorney for Eric Nims, 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 Bachecki, Crom & Co., LLP, the Accountant (“Applicant”) is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the Chapter 7 Trustee:

Fees in the amount of \$2,147.00

Expenses in the amount of \$19.25,

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

6. [17-25114-E-7](#) **HSIN-SHAWN SHENG**  
[DNL-10](#) **Richard Jare**

**MOTION FOR COMPENSATION BY  
THE LAW OFFICE OF DESMOND,  
NOLAN, LIVAICH & CUNNINGHAM  
FOR J. RUSSELL CUNNINGHAM,  
TRUSTEE'S ATTORNEY(S)  
6-18-19 [199]**

**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 18, 2019. By the court's calculation, 23 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, -----.

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Eric Nims, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 30, 2017, through June 17, 2019. The order of the court approving employment of Applicant was entered on November 3, 2017. Dckt. 55. Applicant requests fees in the amount of \$25,205.87 and costs in the amount of \$1,794.13.

## 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, asset recovery and disposition, and tax liability assessment. The Estate has \$43,000.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 201. 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. The Application also provides a detailed overview of the events in this case. The task billing categories used by Applicant are as follows:

Litigation and Contested Matters: Applicant spent 39.2 hours in this category.

Assessment and Recovery of Property of the Estate: Applicant spent 28.1 hours in this category.

Asset Disposition: Applicant spent 6.8 hours in this category.

Fee and Employment Applications: Applicant spent 7.0 hours in this category.

General Case Administration: Applicant spent 5.9 hours in this category.

Administration and Objections: Applicant spent 4.3 hours in this category.

Tax Issues: Applicant spent 4.1 hours in this category.

Claims: Applicant spent 2.8 hours in this category.

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>
J. Russel Cunningham	30.4	\$425.00	\$12,920.00
Nicholas Kohlmeyer	66.8	\$225.00	\$15,030.00
Courier	1	\$50.00	\$50.00
<b>Total Fees for Period of Application</b>			\$28,000.00
<b>Total Fees Requested</b>			\$25,205.87

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,794.13 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Cost</b>
Photocopies	\$648.40
Postage	\$124.89
Advanced Service and Recording Fees	\$1,020.84
<b>Total Costs Requested in Application</b>	\$1,794.13

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

#### **Fees**

The claims in this case were not significant in relation to the services performed by Applicant. Rather, the driving force behind the \$25,000+ in fees herein sought has been the conduct of, and conflict with, the Debtor.

Applicant summarizes at length in the Motion Debtor's lack of cooperation and efforts to hinder Client from fulfilling his fiduciary duties as the Chapter 7 Trustee.

Client in this case obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

Debtor's Response fails to acknowledge that a bankruptcy estate has

been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.

...

The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate.** 11 U.S.C. § 704, 721.

Civil Minutes, p. 5; Dckt. 108 (emphasis added).

At the hearing on Debtor's motion to convert this case to one under Chapter 11, the court stated the following:

Here, the record is replete with evidence as to Debtor's true reasons for wanting dismissal. Debtor states:

I want Cunningham and Nims ejected from the administration of this case and I hope that the court will convert the case to so facilitate.

Declaration ¶ 6, Dckt. 171, and:

I intend to oppose vigorously any fees of the Chapter 7 estate and its professionals anyway, so that is an expense that is not avoidable. Why should I Pay Cunningham and Nims if they just purposely play dumb to rack up fees.

*Id.*, ¶ 6, and:

I need my assets unfrozen in order to fund my other case under chapter 13, case number 19-20302-E-13.

Declaration ¶ 8, Dckt. 177.

There is much bad blood between the Debtor and Trustee in this case. The result of this has been the generation of significant administrative fees in a Chapter 7 with relatively modest unsecured claims. This appears to be driven in significant part by Debtor dictating to her counsel what will be done, what legal arguments will be made, and how the Debtor will not cooperate with the Trustee, nor will the Debtor turn over property of the bankruptcy estate to the Trustee.

...

The court can see that Debtor wants to convert the case to be back in

control of the Estate, to oust the Trustee and his counsel, and to relieve “stress” of having to comply with federal Bankruptcy Law. But, there has been no attempt to demonstrate what a possible Chapter 11 case would look like, whether a Chapter 11 case would be successful, or whether a Chapter 11 would make financial sense.

...

Equally unpersuasive were the arguments of Debtor’s counsel that, in his opinion, the standard provisions of a deed of trust in California nullify federal law as enacted by Congress in 11 U.S.C. § 363(c)(2) expressly prohibiting the use of cash collateral unless either ordered by the court or consent under 11 U.S.C. § 363(c)(2) is given by the creditor. Rather, Debtor’s counsel’s arguments would only further delay the conclusion of this bankruptcy case, raising serious federal law issues and disputes, fighting over theoretical, academic arguments of what might possibly be.

As the court made clear at the hearing, Debtor’s conduct in this case has not been one of diligent, good faith prosecution. It as if every step she takes is to frustrate the administration of this case and foment litigation and otherwise unnecessary expense. In some respects the Chapter 7 trustee has played into Debtor’s hands by appearing to become paralyzed by the threats and demands of Debtor that she pipes through her counsel. This has led to not only a waste of time and money by the Debtor, Trustee, and the Bankruptcy Estate, but waste of the court’s time and resources.

Debtor has demonstrate that she is not capable of complying with federal Bankruptcy Law or prosecute a bankruptcy case. As said before. If the Debtor were proceeding in good faith, she could bring the Chapter 7 case to a conclusion and have her fight over what reasonable fees and costs the professionals in the Chapter 7 case can be allowed. In light of the substantial assets in the Chapter 7 case, there could be an abandonment of some of the assets after all claims are paid to insure that Debtor has sufficient funds to pay her counsel to take up the fight over the professional fees in the Chapter 7 case.

As the court made clear at the hearing, Debtor’s conduct in this case has not been one of diligent, good faith prosecution. It as if every step she takes is to frustrate the administration of this case and foment litigation and otherwise unnecessary expense. In some respects the Chapter 7 trustee has played into Debtor’s hands by appearing to become paralyzed by the threats and demands of Debtor that she pipes through her counsel. This has led to not only a waste of time and money by the Debtor, Trustee, and the Bankruptcy Estate, but waste of the court’s time and resources.

Civil Minutes, Dckt. 179 at 7-9.

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. It is unfortunate when, due to the litigation strategy of a party, higher than normal administrative expenses are incurred and have to be paid from a surplus estate. But a litigious party failing to comply with the Bankruptcy Code cannot validly claim that reasonable and necessary fees incurred in enforcing the rights of this Bankruptcy Estate should not be paid since the

bankruptcy trustee should just have capitulated to Debtor's conduct.

First and Final Fees in the amount of \$25,205.87 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$1,794.13 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 and costs 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	\$25,205.87
Costs and Expenses	\$1,794.13

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 Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") Attorney for Eric Nims, 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 Desmond, Nolan, Livaich & Cunningham, is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by Eric Nims, the Chapter 7 Trustee:

Fees in the amount of \$25,205.87  
Expenses in the amount of \$1,794.13,

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 18, 2019. By the court's calculation, 23 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 to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

-----

**The Motion to Abandon is granted.**

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

The Motion filed by the Chapter 7 Trustee, Eric Nims ("Trustee") requests that the court authorize him to abandon property identified as:

1. 2769 Barrington Terrace, Fremont, California.
2. Debtor's cash and securities in an account at Fidelity Investment in excess of \$50,000.00 (collectively the "Property").

Movant argues the Property is of inconsequential value and benefit to the Estate because the Estate already has the \$43,000.00 in nonexempt funds to pay all allowed claims in this case.

The court finds that there are negative financial consequences for the Estate if it retains the Property—the Property not being necessary to pay all allowed claims in full. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by the Chapter 7 Trustee, Eric Nims (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the property identified as:

1. 2769 Barrington Terrace, Fremont, California.
2. Debtor’s cash and securities in an account at Fidelity Investment in excess of \$50,000.00 (collectively the “Property”)

is abandoned to Hsin-Shawn Cyndi Sheng by this order, with no further act of the Chapter 7 Trustee required.

8. [09-23465](#)-E-7 **MOORE EPITAXIAL, INC.**  
[WFH-10](#) **George Hollister**

**MOTION FOR COMPENSATION FOR  
SENSIBA SAN FILIPPO, LLC,  
ACCOUNTANT(S)  
6-13-19 [320]**

**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 Not 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 June 13, 2019. **By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).**

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

<b>The Motion for Allowance of Professional Fees is <del>is</del> <b>granted</b>.</b>
---

Sensiba San Filippo LLP, the accountant ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 1, 2017, through May 31, 2019. The order of the court approving employment of Applicant was entered on March 27, 2015. Dckt. 253. Applicant requests fees in the amount of \$9,665.00.

## **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 preparation of federal and state tax returns and tax liability analysis. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

In the Application, Applicant .

Tax Return Preparation: Applicant spent 55.5 hours in this category. Applicant prepared federal and state tax returns for the estate for tax years ending September 2017 through 2019. Applicant also provided advice regarding tax liability.

Applicant states the billing rate for services performed, including those already approved in the First Interim Application, ranged from \$400.00 to \$470.00 in the period from 2015 through 2019.

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	\$4,095.00	\$2,000.00
<b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b>	\$4,095.00	

## **~~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. Second and Final Fees in the amount of \$9,665.00 and prior Interim Fees in the amount of \$4,095 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 \$9,665.00~~

~~pursuant to this Application and prior interim fees of \$4,095.00 as final fees pursuant to 11 U.S.C. § 330 in this case.~~

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

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

~~The Motion for Allowance of Fees and Expenses filed by Sensiba San Filippo, LLC, the accountant (“Applicant”) 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 Sensiba San Filippo, LLC is allowed the following fees and expenses as a professional of the Estate:~~

~~Sensiba San Filippo, LLC, Professional employed by the Chapter 7 Trustee.~~

~~Fees in the amount of \$9,665.00~~

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

~~The fees and costs pursuant to this Motion, and fees in the amount of \$4,095.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.~~

~~**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.~~

**Final Ruling:** No appearance at the July 11, 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 7 Trustee, creditors, and Office of the United States Trustee on June 13, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Allowance of Administrative 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.

<p><b>The Motion for Allowance of Administrative Expenses is granted.</b></p>
---

The Chapter 7 Trustee, Michael D. McGranahan (“Movant”), requests an order retroactively and prospectively authorizing payment of administrative expenses. Specifically, Movant requests the approval of the following expenses:

1. \$854.10 for Debtor’s 2019 franchise tax.
2. \$800.00 for Debtor’s 2018 franchise tax.
3. \$283.32 for postage, preparation, and mailing of notice by a third party vendor for motions to abandon property of the Estate (Dckts. 259 and 277).

In support of the Motion, Movant filed his Declaration. Dckt. 327. Movant provides testimony the Estate has assets of \$1,399,343.78.

## **DISCUSSION**

Movant argues the expenses here were necessary for the Estate because (1) the annual franchise tax is required to be paid by every corporation incorporated in California, and (2) the expense for third-party preparation and mailing of notice was incurred in connection with motions to abandon filed by the Trustee on behalf of the Estate.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . . .” Here, the expenses were and are necessary to be paid to preserve the Estate.

The Motion is granted, and the Chapter 7 Trustee is authorized to pay from Estate funds the following administrative expense sought herein.

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

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

The Motion for Allowance of Administrative Expense filed by Michael D. McGranahan (“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 the Chapter 7 Trustee is authorized to pay the following expenses:

1. \$854.10 for Debtor’s 2019 franchise tax.
2. \$800.00 for Debtor’s 2018 franchise tax.
3. \$283.32 for postage, preparation, and mailing of notice by a third party vendor for motions to abandon property of the Estate (Dckts. 259 and 277).

as administrative expenses of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

**Final Ruling:** No appearance at the July 11, 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, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Entry of Discharge is granted.</b></p>
---

The Motion for Entry of Discharge has been filed by the debtor, Paul Mennick ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 12 Trustee, Jan Johnson's ("Trustee") final report was filed on May 13, 2019, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging Trustee was entered on June 20, 2019. Dckt. 212. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor's Declaration (Dckt. 210) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- D. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

A review of the docket shows that Debtor has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case.

There being no objection, Debtor is entitled to a discharge.

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

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

The Motion for Entry of Discharge filed by the debtor, Paul Mennick, 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 the court shall enter the discharge for the debtor, Paul Mennick, in this case.

**Final Ruling:** No appearance at the July 11, 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 Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 6, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion for Entry of Discharge is granted.</b></p>
---

The Motion for Entry of Discharge has been filed by the debtor, Gloria Avila ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 12 Trustee, Jan Johnson's ("the Chapter 12 Trustee"), final report was filed on May 13, 2019, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 12 Trustee was entered on June 20, 2019. Dckt. 57. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor's Declaration (Dckt. 55) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

- D. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- E. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor is entitled to a discharge.

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

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

The Motion for Entry of Discharge filed by Gloria Avila (“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 is granted, and the court shall enter the discharge for Gloria Avila in this case.