

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 11, 2024 at 10:30 a.m.

1. [23-21407](#)-E-7
[KMT-2](#)

BELLA VIEW CAPITAL, LLC
Peter Macaluso

MOTION TO SET ASIDE
6-18-24 [[249](#)]

**The Court Has Posted This as a Tentative Ruling to Allow
the Parties to Address Any Further Issues or Relief Request
That Has Not Been Identified By the Court.**

**No Appearance is Required If A Party Concurs
With the Relief As Stated Below**

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, 2024. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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 Court entered its Order Reopening this Bankruptcy Case on June 19, 2024. Order; Dckt. 255.

No further relief is granted pursuant to this Motion.

Bella View Capital, LLC (“Debtor”) filed the instant case as a Chapter 7 case on April 28, 2023. Docket 1. The case was converted to Chapter 11 on May 15, 2023. Docket 15. A plan was never confirmed, and the court granted Debtor’s Motion to Reconvert to a case under Chapter 7 on November 13, 2023. Docket 188. Nikki B. Farris was appointed as the Chapter 7 Trustee (“Trustee”).

On May 31, 2024, the clerk’s office issued a Final Decree closing the case, Trustee having previously determined there were no assets to administer in Chapter 7.

On June 18, 2024, Trustee filed this instant Motion to Vacate, claiming Trustee became aware of certain assets not disclosed. Specifically, Trustee states with particularity:

1. Days after the closure of the case, the Trustee discovered additional assets and transfers the Debtor never disclosed.
2. The Debtor’s owner, Joly Gagni, who subsequently commenced her own bankruptcy case revealed the Debtor’s ownership interest in real property generally located at 487 Twin River Way, Sacramento, California (“Property”) and a gift made to another individual in the amount of \$100,000 (“Gift”). Mot. 1:25-28, Docket 249.
3. Debtor never identified an interest in the Property or the Gift.
4. Trustee learned about Debtor’s interest in the Property and the Gift when questioning Joly Gagni in her individual bankruptcy case at the 341 Meeting, Trustee also being the Chapter 7 Trustee in that case. *Id.* at 3:5-11.

Trustee submits her own Declaration in support, authenticating the facts alleged in the Motion. Decl., Docket 252. Trustee submits as Exhibits A-D Debtor’s Schedules and other documents failing to mention an interest in the Property or Gift, and she further submits the deeds showing a transfer of title to the Debtor as Exhibits E-G. Docket 253.

Trustee seeks to have the Final Decree closing the case vacated, per Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure Rule 9024.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(2) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Trustee was diligent in quickly filing her Motion to Set Aside, filing the Motion within a week of uncovering the new evidence. Debtor’s interest in the Property and the Gift was never discovered during the case despite reasonable diligence. Trustee argues she could not have been made aware

of these interests of the Debtor earlier, “as no indication from the Schedules or Statement of Information identified any interest in the real property and the gift.” Decl. 2:5-6, Docket 252. This newly discovered evidence leaves assets to be administered, Debtor not timely reporting the interest, giving grounds to set aside the Final Decree.

This Motion was filed on June 16, 2024. In response thereto, the Clerk of the Court entered the Order Reopening this Bankruptcy Case, deeming the request to be for *Ex Parte* Relief.

The Bankruptcy Case having been reopened pursuant to prior order of the court (Order; Dckt. 255), no further 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 Vacate filed by Nikki B. Farris, the Chapter 7 Trustee (“Trustee”), having been presented to the court, the Court having entered an Order (Dckt. 244) on June 18, 2024, reopening this Bankruptcy Case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Bankruptcy Case having been reopened by prior Order of the Court, Dckt. 255, entered on June 18, 2024, there is no further relief to be granted at the July 10, 2024 scheduled hearing on this Motion.

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.

The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, administrative claimants, attorneys of record who have appeared in the case, and Office of the United States Trustee on June 24, 2024. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Transfer the Proceeding to the Fresno Division was 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, -----
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The Motion to Transfer the Proceeding to the Fresno Division is granted, and the case is transferred to the Eastern District of California Bankruptcy Court Fresno Division.

INSUFFICIENT NOTICE

Trails End United for Change ("TEUC") served notice of this Motion and hearing pursuant to Fed. R. Bankr. P. 7005. However, the rules require service to be made pursuant to Fed. R. Bankr. P. 7004 to initiate any adversary proceeding, such as this contested matter. Fed. R. Bankr. P. 7004(b)(9) requires service on the Debtor in Possession and his attorney; service on the Debtor in Possession's attorney alone is insufficient to require the Debtor in Possession to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale*, 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), *aff'd*, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

EXISTENCE OF TEUC AS A PERSON

TEUC has not explained to the court how it is an entity with standing to prosecute a claim in the court. The court has conducted a search on California's Secretary of State website, not finding any entity that is registered to operate as an entity named "Trails End United for Change."

In the present Motion in which counsel lists his client as Trails End United for Change, there is no indication that this "entity" is a corporation, limited liability company, or partnership. Rather, in the pleadings it is stated that Trails End United For Change is "a group of residents at the mobile home part." Motion, p. 2:1-2; Dckt. 109. This appears to be a statement that Trails End United for Change is a group of individuals who are coordinating their individual efforts to try and advance what they believe are their (and other residents in the mobile home park) individual best interests.

If this is just a group of individuals who are coordinating their efforts, then it appears that each individual may have standing, but there is no legal entity known as Trails End United for Change that has standing to appear in Federal Court.

At the hearing, **XXXXXXX**

THE MOTION

TEUC moves this court for an Order transferring the case to the Fresno Division pursuant to 28 U.S.C. § 1412 and Local Bankruptcy Rule 1001-1(f). TEUC states with particularity:

1. Debtor in Possession La Hacienda Mobile Estates, LLC ("Debtor in Possession") originally filed for bankruptcy in the District of Delaware. Mem. 2:14-15, Docket 111.
2. Debtor in Possession's sole asset is a mobile home park located in Fresno, California. Debtor in Possession has been engaged in legal battles with the City of Fresno and residents of the mobile home park in the years preceding this case. *Id.* at 2:2-8.
3. TEUC is a group of these residents who have been engaged in the legal battles with Debtor in Possession.
4. TEUC asserts Debtor in Possession filed in Delaware to make it difficult for TEUC and other claimants to pursue their rights in bankruptcy. *Id.* at 2:15-16.
5. The Delaware Judge, Judge Owens, transferred the case to Fresno Division after a hearing, despite Debtor in Possession arguing the case be heard in Sacramento. *Id.* at 1:23-2:7.
6. The clerk of the court assigned the case to the Sacramento Division pursuant to Local Bankruptcy Rule 1002-1(c) because Debtor in

Possession's mailing address on the petition is in San Joaquin County. *Id.* at 3:8-10.

7. However, Debtor in Possession's asset is located just five minutes from the courthouse in Fresno, where the park residents are located. The park residents are impoverished and face other barriers, such as language barriers, and would have difficulty in traveling three hours to Sacramento to pursue their rights. *Id.* at 6:9-21.
8. Fresno is not inconvenient for Debtor in Possession as Debtor in Possession has already commenced and engaged in litigation in Fresno, including 20 eviction actions. *Id.* at 3:14.

On June 26, 2024, the City of Fresno ("City") joined in TEUC's Motion, supporting the transfer from Sacramento to the Fresno Division. Docket 117. Fresno notes that not only would the residents be better situated to pursue their claims in Fresno, but it would be more convenient for the City as well.

On July 1, 2024, TEUC and Debtor in Possession filed a Stipulation with the court where they agree to transfer the case to the Fresno Division. Docket 120. The Stipulation states:

1. The Recitals set forth above have no force or effect unless and until approved by an order entered in the Case.
2. The Debtor in Possession requests under Local Bankruptcy Rule 1002-1(e), that the Case be immediately reassigned to the Fresno Division of the Eastern District of California. The Parties agree that the Case should be so transferred and request that the Clerk of this Court be directed and authorized to take all necessary actions to complete the transfer.
3. Except as expressly provided for herein, the Parties reserve all rights, claims, remedies and/or defenses, and nothing herein shall constitute any waiver, expressly or implicitly, or otherwise impair the Parties' respective rights, claims, remedies and/or defenses.

Stipulation 3:4-12, Docket 120.

DISCUSSION

28 U.S.C. § 1412 states that "[a] district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." The Ninth Circuit Bankruptcy Appellate Panel has colored the "interest of justice" and "for the convenience of the parties" prongs with the following six factor consideration:

- (1) proximity of creditors to Court;
- (2) proximity of Debtor in Possession to Court;
- (3) proximity of witnesses necessary to administration of estate;

- (4) location of assets;
- (5) economic and efficient administration of case;
- (6) need for further administration if liquidation ensues.

In re Donald, 328 B.R. 192, 204 (B.A.P. 9th Cir. 2005).

Here, the court finds that the factors laid out in *Douglas* support a conclusion that the Fresno Division is the proper venue. The creditors TEUC and Fresno City would both be better situated to litigate there. The Debtor in Possession is also in close proximity to the Fresno Division, having its assets situated in that division and being no stranger to litigating there. Factors three and four support a transfer to the Fresno Division as well along similar lines. The Fresno Division offers the most economic venue as well under these facts, limiting the need for travel to Sacramento or other unnecessary expense.

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 to Transfer the Proceeding to the Fresno Division filed by Trails End United for Change (“TEUC”), 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 case is transferred to the Eastern District of California Bankruptcy Court Fresno Division.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. Fed. R. Bankr. P. 4001(b)(2) (requiring fourteen days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Authority to Use Cash Collateral 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 Authority to Use Cash Collateral and Grant Replacement Liens
is **XXXXXXX**.**

The Motion to Approve Debtor in Possession Budget is **XXXXXXX.**

R & A Enterprises, LLC ("Debtor in Possession") moves for an order approving the use of cash collateral. Debtor in Possession is a Limited Liability Company that has built and opened a car wash business in Yreka, California, called Splash and Dash Car Wash ("Car Wash"). Debtor in Possession obtained an SBA guaranteed loan from Patriot Bank, N.A. ("Creditor"), and used the proceeds to build the Car Wash and begin operations in 2022.

Creditor is secured by the real property commonly known as 1902 Fort Jones Rd., Yreka California 96097, all assets and personal property owned or acquired by Debtor in Possession, and for which John J. Richter has given his personal guarantee.

Debtor in Possession requests the use of cash collateral to continue operations of the car wash and to administer and preserve the value of the Estate. Mot. 3:21-24, Docket 14.

Debtor in Possession proposes to use cash collateral for the following expenses:

Proforma for Express Carwash		Splash & Dash Car Wash				YEAR 1		2024					
		PAID CARS	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars
			MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN		
Tremor	\$12.00	70.00%	5432	5900	6500	7100	6700	6000	5500	5000	5500		
Seismic Wash	\$16.00	10.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500		
Richter Scale Wash	\$20.00	20.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500		
Tremor Wash Revenue	paid washes		\$45,628.80	\$49,560.00	\$54,600.00	\$59,640.00	\$56,280.00	\$50,400.00	\$46,200.00	\$42,000.00	\$46,200.00		
Seismic Wave Revenue	paid washes		\$8,691.20	\$9,920.00	\$10,880.00	\$11,520.00	\$10,400.00	\$9,440.00	\$8,000.00	\$8,000.00	\$8,800.00		
Richter Scale Wash Revenue	paid washes		\$21,728.00	\$24,800.00	\$27,200.00	\$28,800.00	\$26,000.00	\$23,600.00	\$20,000.00	\$20,000.00	\$22,000.00		
MONTHLY UNLIMITED	\$35.00	RELOADS	\$19,250.00	\$21,000.00	\$22,750.00	\$24,500.00	\$25,375.00	\$24,500.00	\$24,500.00	\$24,500.00	\$24,500.00		
tire shine	\$5.00/CAR		\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00		
Total Gross Monthly Revenue			\$95,573.00	\$105,555.00	\$115,705.00	\$124,735.00	\$118,330.00	\$108,215.00	\$98,975.00	\$94,775.00	\$101,775.00		\$668,113.00
CREDIT CARD FEE	3% of Gross Revenue		\$2,867.19	\$3,166.65	\$3,471.15	\$3,742.05	\$3,549.90	\$3,246.45	\$2,969.25	\$2,843.25	\$3,053.25		\$20,043.39
Total Gross Revenue			\$92,705.81	\$102,388.35	\$112,233.85	\$120,992.95	\$114,780.10	\$104,968.55	\$96,005.75	\$91,931.75	\$98,721.75		\$648,069.61
Expenses													TOTAL EXP.
Manager /Per Month #1			\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00		\$54,000.00
Employees			\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00		\$108,000.00
PAYROLL TAX			\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00		\$31,500.00
Electric			\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00		\$72,000.00
Water			\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00		\$10,800.00
Chemical			\$3,802.40	\$4,130.00	\$4,550.00	\$4,970.00	\$4,690.00	\$4,200.00	\$3,850.00	\$3,500.00	\$3,850.00		\$37,542.40
Liability Ins.			\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00		\$21,744.00
DRB support for POS/equipment			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00		\$13,500.00
Real Property Tax (Estimated@1.5% of land & Bldg.)			\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00		\$33,750.00
Advertising			\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00		\$9,000.00
Phone and Internet			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00		\$4,500.00
Maintenance			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00		\$4,500.00
SECURITY CAMERA			\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00		\$2,475.00
Legal and Accounting			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00		\$4,500.00
Claims			\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00		\$2,700.00
Trash Pickup			\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00		\$5,400.00
Company paid fuel			\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00		\$15,750.00
Owners Company car insurance			\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00		\$4,950.00
MANAGEMENT FEE(ARNESEN)			\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00		\$22,500.00
RICHTER LOAN INTEREST			\$0.00	\$0.00	\$0.00	\$0.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00		\$24,000.00
Misc.			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00		\$13,500.00
Total Monthly Expenses			\$47,593.40	\$46,171.00	\$46,591.00	\$47,011.00	\$46,731.00	\$46,241.00	\$45,891.00	\$45,541.00	\$45,891.00		\$280,338.40
Monthly Gross Revenue			\$92,705.81	\$102,388.35	\$112,233.85	\$120,992.95	\$114,780.10	\$104,968.55	\$96,005.75	\$91,931.75	\$98,721.75		\$648,069.61
Monthly Gross Profit			\$45,112.41	\$56,217.35	\$65,642.85	\$73,981.95	\$68,049.10	\$58,727.55	\$50,114.75	\$46,390.75	\$52,830.75		\$367,731.21
BANK PAYMENT YEAR 1			\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00		\$192,000.00
Monthly Net			\$13,112.41	\$24,217.35	\$33,642.85	\$41,981.95	\$36,049.10	\$26,727.55	\$18,114.75	\$14,390.75	\$20,830.75		\$175,731.21
													1

Exhibit, Docket 17. Creditor would be paid \$32,000 per month during 2024 as adequate protection under this proposed budget.

Debtor in Possession submits the Declaration of its attorney, Stephen M. Reynolds, in support. Decl., Docket 16. Mr. Reynold's testimony authenticates the budget and states the \$32,000 monthly payment is roughly the contract amount. *Id.* at ¶ 2.

CREDITOR'S OPPOSITION

Creditor submitted an Opposition on June 28, 2024. Docket 25. Creditor states that it has accelerated the loan, and the balance owing is in excess of \$3,750,000. Opp'n ¶ 2, Docket 25. Creditor

argues there is no evidence showing that its interest is adequately protected. Mr. Reynolds Declaration in support of the Motion is “not based on personal knowledge, lacks foundation, and is inadmissible.” *Id.* at ¶ 3.

Creditor states, if the loan were not accelerated, its monthly payment would be \$34,372.77, not \$32,000. Creditor argues the car wash machinery and equipment has limited life and Debtor in Possession’s use decreases the value. *Id.* at ¶ 5. Debtor in Possession has failed to show its proposed payments adequately protect Creditor.

Finally, Credit requests if Debtor in Possession is authorized to use cash collateral, it be on an interim basis and no budget is approved until Creditor consents or Debtor in Possession provides evidence and a showing in support of a proposed budget. *Id.* at 6:13-19.

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

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for Debtor in Possession to continue and operate the business as it produces value for the Estate. Creditor will also receive a substantial monthly adequate protection payment in the amount of \$32,000, which the court finds sufficiently protects Creditor's interest in this interim period.

However, Creditor requests evidence and a showing that the proposed budget offers sufficient adequate protection payments to preserve its interest.

As Creditor points out, the testimony in support of the Debtor in Possession's Motion is Debtor in Possession's counsel, who testifies that:

- ★ The Debtor in Possession His client has told him
- ★ That the Debtor in Possession has prepare a budget
- ★ That the Debtor in Possession says that the budget information is accurate
- ★ That counsel heard the Debtor in Possession say that the budget has been prepared accurately
- and
- ★ That counsel testifies that he personally heard the Debtor in Possession say the forgoing.

Declaration; Dckt. 16.

No responsible representative of the Debtor in Possession has come forward to testify as to the financial information concerning the Debtor in Possession, who is the fiduciary of the Bankruptcy Estate operating this business that is property of the Bankruptcy Estate. 11 U.S.C. § 541(a).

The Bankruptcy Petition is signed by John Richter as the "Managing Member" of the Debtor Limited Liability Company. Dckt. 1 at p. 4. Mr. Richter is identified as the only managing member.

Mr. Richter not providing testimony, as the responsible representative of the Debtor, caused the court some concerning. This led to the court checking the California Secretary of State's website for R & A Enterprise, LLC's registration to do business in California. The court's inquiry resulted in finding an entity named R & A Enterprises, LLC registered with the State of California, with its agent listed as Ara Tien and its principal and mailing address of 25648 Moore Lane, Stevenson Ranch, California. Stevenson Ranch, California is in Los Angeles County.

A LEXIS public records search turned up an entity named R & A Enterprises, LLC being registered in Nevada. The manager is identified as John Richter, who is listed as the manager for the Debtor in this Case. Foreign entities are required to register See Cal. Corp. Code §§ 17708.01 *et seq.* California Corporation Code § 17708.02 provides for a foreign limited liability company to obtain a certificate or registration to transact business in California.

At the hearing, **XXXXXXX**

~~—————The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period May, 2024, through January, 2025, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral from the Car Wash is to be held in a cash collateral account and accounted for separately by Debtor in Possession.~~

The court grants this Motion on and interim basis and continues the hearing to **xx:xx x.m.** on **xxxx, 202x**, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by **xxxx, 202x** (seven days before hearing), with any opposition to be presented orally at the continued hearing.

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 R & A Enterprises, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the ~~Motion is granted, pursuant to this order, for the period May, 2024, through January, 2025, and the cash collateral may be used to pay the following expenses:~~

Proforma for Express Carwash		Splash & Dash Car Wash			YEAR 1	2024						
		PAID CARS	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	
		MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN		
Tremor	\$12.00	70.00%	5432	5900	6500	7100	6700	6000	5500	5000	5500	
Seismic Wash	\$16.00	10.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500	
Richter Scale Wash	\$20.00	20.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500	
Tremor Wash Revenue	paid washes		\$45,628.80	\$49,560.00	\$54,600.00	\$59,640.00	\$56,280.00	\$50,400.00	\$46,200.00	\$42,000.00	\$46,200.00	
Seismic Wave Revenue	paid washes		\$8,691.20	\$9,920.00	\$10,880.00	\$11,520.00	\$10,400.00	\$9,440.00	\$8,000.00	\$8,000.00	\$8,800.00	
Richter Scale Wash Revenue	paid washes		\$21,728.00	\$24,800.00	\$27,200.00	\$28,800.00	\$26,000.00	\$23,600.00	\$20,000.00	\$20,000.00	\$22,000.00	
MONTHLY UNLIMITED	\$35.00	RELOADS	\$19,250.00	\$21,000.00	\$22,750.00	\$24,500.00	\$25,375.00	\$24,500.00	\$24,500.00	\$24,500.00	\$24,500.00	
tire shine	\$5.00/CAR		\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	
Total Gross Monthly Revenue			\$95,573.00	\$105,555.00	\$115,705.00	\$124,735.00	\$118,330.00	\$108,215.00	\$98,975.00	\$94,775.00	\$101,775.00	\$668,113.00
CREDIT CARD FEE	3% of Gross Revenue		\$2,867.19	\$3,166.65	\$3,471.15	\$3,742.05	\$3,549.90	\$3,246.45	\$2,969.25	\$2,843.25	\$3,053.25	\$20,043.39
Total Gross Revenue			\$92,705.81	\$102,388.35	\$112,233.85	\$120,992.95	\$114,780.10	\$104,968.55	\$96,005.75	\$91,931.75	\$98,721.75	\$648,069.61
Expenses												TOTAL EXP.
Manager /Per Month #1			\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$54,000.00
Employees			\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$108,000.00
PAYROLL TAX			\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$31,500.00
Electric			\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$72,000.00
Water			\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$10,800.00
Chemical			\$3,802.40	\$4,130.00	\$4,550.00	\$4,970.00	\$4,690.00	\$4,200.00	\$3,850.00	\$3,500.00	\$3,850.00	\$37,542.40
Liability Ins.			\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$21,744.00
DRB support for POS/equipment			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$13,500.00
Real Property Tax (Estimated@1.5% of land & Bldg.)			\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$33,750.00
Advertising			\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$9,000.00
Phone and Internet			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$4,500.00
Maintenance			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$4,500.00
SECURITY CAMERA			\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$2,475.00
Legal and Accounting			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$4,500.00
Claims			\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$2,700.00
Trash Pickup			\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$5,400.00
Company paid fuel			\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$15,750.00
Owners Company car insurance			\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$4,950.00
MANAGEMENT FEE(ARNESEN)			\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$22,500.00
RICHTER LOAN INTEREST			\$0.00	\$0.00	\$0.00	\$0.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00	\$24,000.00
Misc.			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$13,500.00
Total Monthly Expenses			\$47,593.40	\$46,171.00	\$46,591.00	\$47,011.00	\$46,731.00	\$46,241.00	\$45,891.00	\$45,541.00	\$45,891.00	\$280,338.40
Monthly Gross Revenue			\$92,705.81	\$102,388.35	\$112,233.85	\$120,992.95	\$114,780.10	\$104,968.55	\$96,005.75	\$91,931.75	\$98,721.75	\$648,069.61
Monthly Gross Profit			\$45,112.41	\$56,217.35	\$65,642.85	\$73,981.95	\$68,049.10	\$58,727.55	\$50,114.75	\$46,390.75	\$52,830.75	\$367,731.21
BANK PAYMENT YEAR 1			\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$32,000.00	\$192,000.00
Monthly Net			\$13,112.41	\$24,217.35	\$33,642.85	\$41,981.95	\$36,049.10	\$26,727.55	\$18,114.75	\$14,390.75	\$20,830.75	\$175,731.21

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IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that Debtor in Possession shall make monthly adequate protection payments of \$32,000 to Patriot Bank, N.A. ("Creditor").

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xx:xx x.m. on xxxx, 202x**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 202x**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 202x** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

Thursday, July 11, 2024 at 10:30 a.m.

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 in Possession and Debtor in Possession's Attorney as stated on the Certificate of Service on June 25, 2024. The court computes that 16 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: \$1738.00 due on June 11, 2024.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$1738.00.

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 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 and parties in interest, and parties requesting special notice on June 18, 2024. By the court's calculation, 23 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 4004(a) (requiring twenty-eight days' notice). By the court's calculation, Objector is 5 days' short of the required notice period.

At the hearing, **XXXXXXX**

The Motion for Denial of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Denial of Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on June 17, 2024. Docket 78.

Objector argues that Michael Gerrit Wilwerding and Erin Kimberly Wilwerding ("Debtor") are not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor Michael Garritt Wilwerding filed a Chapter 7 bankruptcy case on October 13, 2017 in the Northern District of California. Case No. 17-10772. Debtor received a discharge on April 25, 2018. Case No. 17-10772, Docket 19.

The instant case was filed under Chapter 13 on February 3, 2023, but then converted to Chapter 7 on March 15, 2024. Docket 59.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on April 25, 2018, which is less than eight years preceding the date of the filing of the instant case. Case No. 17-10772, Docket 19. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 23-202363), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant 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 Denial of Discharge filed by Tracy Hope Davis, the United States Trustee, (“Objector”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion for ~~Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 23-202363, the case shall be closed without the entry of a discharge.~~

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 12 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 18, 2024. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Chapter 12 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter xx Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Extend Deadline to File a Chapter 12 Plan is granted.</p>

Debtor in Possession Rhett Burgess ("Debtor in Possession") files this Motion requesting an Order from the court granting a 30-day extension on his deadline to file a Chapter 12 Plan. Debtor in Possession filed the instant case on March 20, 2024. 11 U.S.C. § 1221 provides that a Plan must be filed not later than 90 days after relief has been granted. Here, Debtor in Possession's deadline to file a Plan would have been on June 18, 2024.

In the Declaration filed in support, Debtor in Possession states he needs this 30 days to file a realistically confirmable Plan. Decl. 2:13-14, Docket 31. Debtor in Possession informs the court that creditors in this case have largely ignored the automatic stay, including creditors continue to prosecute state court actions after the commencement of this case. *Id.* at 2:15-24. Further, Debtor in Possession is having trouble recovering financial information from his estranged spouse, information that is crucial for filing the necessary tax returns. *Id.* at 3:7-22. Finally, Debtor in Possession reminds the court of his attorney's various health complications in impeding progress.

DISCUSSION

11 U.S.C. § 1221 states:

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

According to Collier's Treatise on Bankruptcy, "[t]he phrase 'substantially justified' was not explained in the legislative history, and so there was no guidance on how the phrase was to be interpreted." 8 COLLIER ON BANKRUPTCY ¶ 1221.01[2]. By later amending this statute and adding the phrase "attributable to circumstances for which the debtor should not justly be held accountable," it is clear that "Congress intended by this change to make it more difficult for debtors to obtain extensions." *Id.*

Here, the court finds the extension is warranted. Factors exist here causing delay for which the debtor should not justly be held accountable. Debtor is experiencing difficulty in dealing with creditors violating the stay outside of bankruptcy and in obtaining necessary financial information, all while Debtor's attorney has undergone some medical issues.

For these reasons, the Motion is granted and the deadline to file a Chapter 12 Plan is extended up and through July 18, 2024.

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 Extend Deadline to File a Chapter 12 Plan filed by Rhett Burgess ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadline to file a Chapter 12 Plan is extended up and through July 18, 2024.

FINAL RULINGS

7. [24-22107-E-7](#) **VICTOR SANCHEZ-GONZALEZ** **MOTION TO COMPEL ABANDONMENT**
[JCK-1](#) **AND SILVIA SANCHEZ** **6-12-24 [15]**
 Kathleen Crist

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2024. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Victor Sanchez-Gonzalez and Silvia Jazmin Sanchez (“Debtor”) requests the court to order Irma Edmonds (“the Chapter 7 Trustee”) to abandon the following three items of property:

1. a 2015 Nissan NV 200,
2. a 2018 Ford F150 Ice Cream Bus, and
3. a freezer and converter.

("Property"). The Property has been fully exempted on Schedule C pursuant to Cal. Code Civ. P. § 704.060, except for the 2018 Ford F150 Ice Cream Bus as Debtor has no equity in that asset. *See* Schedule D 24 line 2.4, Docket 1; Schedule C 21, Docket 1. The 2018 Ford F150 Ice Cream Bus has an asserted value of \$14,285 and the outstanding lien of creditor Lincoln Automotive Finance is in the amount of \$14,367. Schedule D 24 line 2.4, Docket 1. The Declaration of Debtor has been filed in support of the Motion. Docket 17.

On June 12, 2024, the Chapter 7 Trustee issued her Docket Entry Report of No Distribution.

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

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

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

The Motion to Compel Abandonment filed by Victor Sanchez-Gonzalez and Silvia Jazmin Sanchez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the following three items of property:

1. a 2015 Nissan NV 200,
2. a 2018 Ford F150 Ice Cream Bus, and
3. a freezer and converter.

owned by Debtor are abandoned by the Chapter 7 Trustee, Irma Edmonds ("Trustee") to Victor Sanchez-Gonzalez and Silvia Jazmin Sanchez by this order, with no further act of the Trustee required.

CASE CLOSED: 07/18/19

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 11, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Application for Unclaimed Funds 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>The Application for Unclaimed Funds is granted.</p>

This matter comes before the Court pursuant to 11 U.S.C. § 347(a), 28 U.S.C. §2042, and the application of Citibank N.A., seeking payment of funds previously unclaimed by Citibank, N.A. in the above-entitled case. It appears from the application and supporting documentation that Citibank, N.A. is entitled to the funds paid into Court.

Therefore,

IT IS ORDERED that the Clerk is directed to pay \$10,987.48 from the Bankruptcy Estate of Vasco DeMello and Michele DeMello to:

Citibank, N.A.

The funds may be disbursed only after 14 calendar days from the entry of this court's order to allow for the appeal period to pass.

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on June 18, 2024. The court computes that 23 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: \$338 due on June 4, 2024.

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

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

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors and parties in interest, and Office of the United States Trustee on June 11, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice, Debtor having appeared at the continued Meeting of Creditors held on June 21, 2024.

The Chapter 7 Trustee, Name of Trustee ("Trustee"), seeks dismissal of the case on the grounds that Marko Mikovic ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

However, Debtor appeared at the continued 341 Meeting held on June 21, 2024. Trustee then filed a Report of No Distribution on June 21, 2024, concluding there are no assets to administer.

Debtor filed a Response on June 27, 2024. Dckt. 88. Debtor states he apologizes he did not attend the initial 341 Meeting, but has attended the subsequent meeting and asks his case not be dismissed.

The Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

11. [21-23778-E-7](#)
[DNL-3](#)

CAREN SPAULDING
Jeffrey Ogilvie

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM TRUSTEES
ATTORNEY(S)**
6-5-24 [\[46\]](#)

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 5, 2024. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

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

Geoffrey Richards, the Chapter 7 Trustee (“Applicant,” “Trustee”), applies for an order approving First and Final Fees for his general counsel, Desmond, Nolan, Levaich, and Cunningham (“DNLC”).

Fees are requested for the period December 13, 2021, through June 4, 2024. The order of the court approving employment of Applicant was entered on December 13, 2021. Dckt. 16. Applicant requests fees in the amount of \$46,372.50 and costs in the amount of \$2,188.02.

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 investigating two parcels of property that Debtor in this case likely had an interest in, which resulted in prosecuting an adversary proceeding and realizing a substantial return for the Estate. The Estate has \$140,000 of unencumbered monies to be administered as of the filing of the application. Mot. 4:13, Docket 46. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration / Fee and Employment Applications: DNLC spent 5.1 hours in this category. DNLC communicated with the Trustee regarding the investigation and strategy for liquidating the assets of the estate, reviewed inquiries from creditors regarding recoveries by the estate, and prepared its fee and employment applications. Mot. 5:10-13, Docket 46.

Litigation & Contested Matters: DNLC spent 108.4 hours in this category. DNLC assisted the Trustee in prosecuting the community/separate property interests between the Debtor and Spouse, including filing the heavily contested adversary proceeding that required the focus and expenditure of estate resources. The conduct by the adversary defendants (e.g., approving stipulations and subsequent reversals) substantially increased the costs of prosecuting the case, and the Trustee was ultimately forced to move for leave to amend the complaint after discovering that the joint interests in property shared by the Debtor and Spouse were, in fact, community in nature. *Id.* at 5:14-20.

Asset Analysis & Recovery: DNLC spent 3.5 hours in this category. DNLC assisted the Trustee in making initial investigations of the Lawrence and Outsen Properties, commonly known as 309 Lawrence Lane, Apt. 2, Yreka, California (“Lawrence Property”) and 531 Outsen Road, Yreka, California (“Outsen Property”).

Tax Issues: DNLC spent 1.6 hours in this category. DNLC communicated with the Trustee and prospective accountant regarding whether the estate would be required to file any tax return(s) in this matter and estimated totals for federal and state tax liability. *Id.* at 5:23-25.

Settlement / Non-binding ADR: DNLC spent 25.4 hours in this category. DNLC assisted the Trustee in conducting the mediation, including substantial exchanges with defense counsel before and after same to negotiate a resolution of the adversary claims. *Id.* at 5:26-28.

Discovery: DNLC spent 36.8 hours in this category. DNLC assisted the Trustee in conducting party and third-party discovery, including informal discovery with the lessees and taling the depositions of the Debtor and Spouse. Discovery in this matter necessitated additional follow-up because third-parties were invariably slow to respond and the defendants were initially unresponsive to discovery requests. *Id.* at 6:1-4.

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

Names of Professionals	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham	5.7	\$495.00	\$2,821.50
J. Russell Cunningham	10.3	\$425.00	\$4,377.50
Benjamin C. Tagert	7.6	\$325.00	\$2,470.00
Benjamin C. Tagert	32.40	\$275.00	\$8,910.00
Benjamin C. Tagert	119.3	\$225.00	\$26,842.50
James N. Silverthorn	3.5	\$190.00	<u>\$665.00</u>
Total Fees for Period of Application			\$46,372.50 (including 2 hours billed by former law clerk, Arthur Zhu)

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,040.81 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$48.20
Postage		\$93.78

Production, Deposition & Recording Costs		\$1,693.94
Parking		\$210.00
Filing Fees		\$350.00
Total Costs Requested in Application		\$2,040.81

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$46,372.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$2,040.81 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$46,372.50
Costs and Expenses	\$2,040.81

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 Geoffrey Richards, the Chapter 7 Trustee (“Applicant,” “Trustee”), filed on behalf of his general counsel, Desmond, Nolan, Levaich, and Cunningham (“DNLC”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

DNLC, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$46,372.50

Expenses in the amount of \$2,040.81,

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

12. [22-23379-E-7](#)
[RLL-9](#)

ABDUL MUNIF
Gabriel Liberman

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF REYNOLDS LAW, LLP
TRUSTEES ATTORNEY(S)
5-30-24 [133]**

Final Ruling: No appearance at the July 11, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on May 30, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Reynolds Law, LLP, the Attorney (“Applicant”) for Geoffrey Richards, the Chapter 7 Trustee (“Trustee,” “Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 16, 2023, through May 9, 2024. The order of the court approving employment of Applicant was entered on May 25, 2023, effective on May 16, 2023. Docket 53. Applicant requests fees in the amount of \$19,560.00 and costs in the amount of \$264.61.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant’s services for the Estate include providing services as the Trustee’s general counsel, to accomplish the goal of administering the non-exempt assets of the estate with material value, including parcels of real property. The Estate has \$97,945.68 of unencumbered monies to be administered as of the filing of the application. Mot. 2:13, Docket 133. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 23.7 hours in this category. Applicant assisted the Trustee by handling case-status and other questions from creditors, including current and former tenants of the Debtor, and by communicating with counsel for secured creditors; communicated with counsel for the Debtor regarding condition of real properties, the eviction of holdover tenants, and other administrative tasks; filed motion and obtained court order authorizing extension of time to assume or reject tenant leases for units on Maple Street Property; once determination was made the Maple Street Property was not marketable, filed motion and obtained court order authorizing abandonment of Maple Street Property; and filed motion and obtained court order authorizing early disbursement of \$20,000.00 to the Debtor as part of the surplus funds of the estate, which the court granted as a motion to authorize abandonment. Mot. 4:5-15, Docket 133.

Efforts to Assess and Recover Property of the Estate: Applicant spent 6.6 hours in this category. Applicant communicated extensively with the Trustee, his brokers, and with the Debtor's counsel to assist the trustee in determining the value of each real property of the estate; with permission of counsel, communicated directly with the Debtor to gather information needed by brokers to gain access to real properties where tenants in possession, so that the brokers could determine condition of interior and therefore accurately value property. *Id.* at 3:26-4:4.

Employment and Fee Applications: Applicant spent 5.3 hours in this category. Applicant prepared, filed, and served the application for approval of RLL's employment as general counsel; prepared and filed application to employ Lyon Real Estate at the Trustee's real estate broker for sale of Maple Street Property; and prepared and filed application to employ Lyon Real Estate at the Trustee's real estate broker for sale of Arcade Property. *Id.* at 4:18-23.

Asset Disposition: Applicant spent 10.9 hours in this category. Applicant communicated extensively with real estate brokers, the Debtor's counsel, and the Trustee to assist in determining the marketing rental real properties, where there were a number of issues that affected the marketability of the property on Maple Street; prepared, filed, and served motion and obtained order for approval of sale of the Arcade Property; and communicated as needed with the Debtor's counsel, and the relevant title company in regard to issues that arose in regard to the close of escrow, including the need for signatures from the Debtor's spouse. *Id.* at 4:24-5:3.

Claims Issues: Applicant spent 2.6 hours in this category. Applicant communicated extensively with former tenant at the Debtor's Arcade property regarding her claim for refund of a rental deposit; reviewed filed claims and discussed status of allowed claims with the Trustee. *Id.* at 5:4-6.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Anthony Asabedo, Attorney	49.1	\$400.00	<u>\$19,640.00</u>
Total Fees for Period of Application			\$19,560.00 (slight reduction for clerical services rendered)

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$264.61 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Certified copies of an order approving the sale of real property and the Debtor's voluntary petition (for recording)	-----	\$29.00
Court Call	-----	\$57.50
Gas mileage from Roseville to and from Sacramento for two court appearances	-----	\$42.11

Parking	-----	\$6.00
Recording fee for notice of bankruptcy	-----	\$130.00
Total Costs Requested in Application		\$264.61

The court does not reimburse for court call expense. The attorney can come into court at no cost. Therefore, costs of \$207.11 are approved.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$19,560.00 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 \$207.11 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$19,560.00
Costs and Expenses	\$207.11

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 Reynolds Law, LLP, the Attorney (“Applicant”) for Geoffrey Richards, 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 Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:

Reynolds Law, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$19,560.00

Expenses in the amount of \$207.11,

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