UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 12, 2018, at 10:30 a.m.

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1. **14-91201-E-7** **JESTEEN HEBERLE** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK**
Anna Evans **6-7-18 [30]**

Final Ruling: No appearance at the July 12, 2018 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 7 Trustee, Creditor, and Office of the U.S. Trustee on June 7, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Jesteen Heberle ("Debtor") commonly known as 6233 Shaefer Court, Riverbank, California ("Property"). FN.1.

FN.1. Debtor filed the Motion and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1).

Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

A judgment was entered against Debtor in favor of Creditor in the amount of $8,793.63. An abstract of judgment was recorded with Stainslaus County on April 28, 2014, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $181,729.00 as of the petition date. Dckt. 11. The unavoidable consensual liens that total $148,907.26 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of $32,821.74 on Amended Schedule C. Dckt. 11.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jesteen Heberle ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stainslaus County Case No. 2002247, recorded on April 28, 2014, Document No. 2014-0026070-00, with the Stainslaus County Recorder, against the real property commonly known as 6233 Shaefer Court, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. **18-90102-E-7** **OFELIA GUDINO** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.**
SDM-2 **Scott Mitchell** **6-14-18 [35]**

Final Ruling: No appearance at the July 12, 2018 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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Ofelia Gudino ("Debtor") commonly known as 425 C Street, Waterford, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,867.65. An abstract of judgment was recorded with Stanislaus County on August 29, 2017, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $190,700.00 as of the petition date. Dckt. 34. The unavoidable consensual liens that total $95,598.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 13. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $95,102.00 on Amended Schedule C. Dckt. 34.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ofelia Gudino ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 2024222, recorded on August 29, 2017, Document No. 2017-0063108-00 with the Stanislaus County Recorder, against the real property commonly known as 425 C Street, Waterford, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3.	**16-90603-E-7** **HSM-3**	**MARK ONE CORPORATION** **Cecily Dumas**	**MOTION TO SELL FREE AND CLEAR OF LIENS** **6-4-18 [108]**

No 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 4, 2018. By the court's calculation, 38 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is xxxxxxxxxxxxx.

The Bankruptcy Code permits Irma Edmonds, the Chapter 7 Trustee, ("Movant" or "Seller") to sell property of the estate after a noticed hearing. 11 U.S.C. §363. Here, Movant proposes to sell the remaining property of Mark One Corporation's ("Debtor") bankruptcy estate, consisting of known and unknown assets or claims that have not been previously sold, assigned, or transferred ("Property" or "Remnant Assets"), free and clear of liens, claims, interests, and encumbrances, and related relief.

The proposed purchaser of the Property is Oak Point Partners, LLC ("Purchaser"), and the terms of the sale are summarized by the court (the full terms of the sale are set forth in the Asset Purchase Agreement filed as Exhibit A in support of the Motion, Dckt. 111):

A. **Purchase Price.** The Purchase Price is $5,000.00 payable within 3 business days of receipt by Purchaser of the executed Asset Purchase Agreement and the entry of a non-appealable Order of the court approving this Agreement.

B. **Assignment of Remnant Assets.** Seller hereby irrevocably and unconditionally sells, assigns, transfers and conveys to Purchaser all of Seller's rights, title and interest, in and to the Remnant Assets, as well as any and all claims and rights related to the Remnant Assets, including, without limitation, all cash, securities, instruments and other property that may be paid or issued in conjunction with the Remnant Assets and all amounts, interest, and costs due under the Remnant Assets.

C. **Seller's Representations and Warranties.** Except as specifically set forth herein, Seller sells, assigns, and transfers the Remnant Assets to Purchaser "as is, where is" without any representations or warranties.

D. **Free and Clear Sale.** The sale of Remnant Assets shall be free and clear of any liens, claims, or encumbrances pursuant to 11 U.S.C. § 363(f).

E. **Exclusion.** The Remnant Assets do not include (i) cash held by Debtor or the Chapter 7 Trustee for distribution to creditors and professionals; (ii) any and all Goods (e.g., office furniture) of Debtor; (iii) the Purchase Price for the Remnant Assets.

The Motion seeks to sell the Property free and clear of liens, claims, interests, and encumbrances, and related relief. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)–(5).

Movant has made the business judgment that the purchase price represents a fair and reasonable sales price for the Remnant Assets and represents the highest and best offer for the sale of the Remnant

Assets. Additionally, Movant holds that the benefit of receiving immediate payment for the Remnant Assets outweighs the potential benefits of retaining the Remnant Assets. Finally, Movant believes that the cost of pursuing the Remnant Assets will likely exceed the benefit that the Estate would possibly receive.

Request to Sell Free and Clear

For this Motion, Movant asserts that to the best of Movant's knowledge no parties hold any valid liens or encumbrances with respect to the Remnant Assets. Movant states that in the unlikely event that there are interests (*i.e.*, property rights) that may be asserted in the Remnant Assets, Movant believes that one or more of the conditions (if creditor with the property right and the property right itself were identified) set out in11 U.S.C. § 363(f) could be satisfied for the unidentified creditor and unidentified property right.

In substance, Movant reads 11 U.S.C. § 363(f) to provide that the court, without identifying any person, without identifying the property right, without identifying the specific legal grounds for the order, can terminate unidentified property rights of unidentified persons because . . . . . Movant thinks that such is proper.

As courts have noted, orders or judgments issued for which no notice was given and no Due Process afforded are void. As discussed by the Supreme Court in *Mullane v. Central Hanover Bank & Trust, Co.*, 339 U.S. 306, 315 (1950):

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; *Roller v. Holly*, 176 U.S. 398.

Movant may argue, "well, for anyone who got this Motion, they could figure out that if they had some interest, this might effect it." If so, Movant could name everyone and the court's order so provide. However, it appears that what Movant wants is not an order free and clear of the known interests, but of the unknown, those not participating in these proceedings. Essentially, by limited notice Movant requests this in rem relief against the world. No basis for such in rem relief has been provided.

The request for the sale to be free and clear of liens is denied.

DISCUSSION

Violation of Local Bankruptcy Rule 9004

Before addressing the substance of the Motion, the court first has to address Movant's compliance with the Local Bankruptcy Rules. In the Eastern District of California, there is one set of uniform local rules for all Departments (though some judges apply the Rules with more bright lines than others). One set of rules relates to the proper form of pleadings filed in this District. Such rules arose out of a confusing mishmash of documents that the court was expected to review and have rulings issued upon

with a week to ten-day turnaround. As to the Local Bankruptcy Rules, this is what is covered now by Rules 9004-1, 9004-2, and 9014-1:

LOCAL RULE 9004-1
General Requirements of Form

(a) General Format of Documents. All pleadings and documents shall be formatted consistent with Local Bankruptcy Rule 9004-2. The Clerk shall not refuse to file any proffered document submitted in violation of this Rule, but shall bring such document to the attention of the Court. Any attorney or trustee who files a document in violation of this Rule may be subject to monetary or non-monetary sanctions.

LOCAL RULE 9004-2
Formatting Pleadings and Other Documents

(c) Organization.

1) Filing of Separate Documents. Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

LOCAL RULE 9014-1
Motion and Other Contested Matter Calendar and Procedure

(d) Format and Content of Motions and Notices.

4) Separate Documents. Except as provided herein, each of the documents described in subpart (d)(1) hereof shall be filed as a separate document. **A motion or other request for relief and a memorandum of points and authorities thereto may be filed together as a single document when not exceeding six (6) pages in length, including the caption page.**

When a motion and points and authorities are combined, they are commonly referred to as a "Mothorities." This combining of the pleadings is only a recent amendment to the Local Rules, and prior to that all points and authorities had to be a separate document.

The present Motion is such a Mothorities, in which Movant has provided extensive legal citations, quotations, and arguments—well beyond the grounds stated with particularity as required by Federal Rule of Bankruptcy Procedure 9013. These legal authorities cover approximately three pages of the Mothorities.

The Mothorities, Dckt. 108, is a total of seven (7) pages in length. That exceeds the six (6) page maximum permitted by the Local Rules. The Rules Committee and court concluded that an objective page limit was necessary because the suggested "I can do it so long as it is a 'simple' Mothorities" was an unworkable standard. There is not a "maybe" six page rule, leaving it for attorneys to guess (push the boundaries of) "well, if seven is ok, I can do ten pages," and "you let attorney X do eight pages, my fifteen are ok, I'm a really, really, really good(er) writer."

Here, the Mothorities does not comply with the Local Rules. At the hearing, Counsel addressed this violation and possible reasonable resolution as xxxxxxxxxxxxxxxxxxxxxx

Ruling on Motion

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

Based on the evidence before the court, the court determines that the proposed sale ~~is in the best interest of the Estate because it generates funds at the end of the case as Movant is winding down proceedings.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h). Rather, Movant merely "requests" that the court order that the fourteen-day stay of enforcement as required by the United States Supreme Court be ignored, without cause shown.

This part of the requested relief is not granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that ~~Irma Edmonds, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Oak Point Partners, LLC, or nominee ("Buyer"), the Property of the Estate commonly known as known and unknown~~

assets or claims that have not been previously sold, assigned, or transferred ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $5,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 111, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

4. **09-90311-E-7** **BRIAN/PATTY CARROLL**
SSA-4 **Michael Williams**

MOTION TO ENLARGE PREVIOUS ORDER APPOINTING SPECIAL COUNSEL TO PROSECUTE PERSONAL INJURY/PRODUCT LIABILITY MEDICAL DEVICE CLAIM AND SET TERMS AND CONDITIONS OF CONTINGENCY FEE AGREEMENT
6-19-18 [106]

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 19, 2018. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Enlarge Order 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 Enlarge Order is granted.

Michael McGranahan ("the Chapter 7 Trustee") moves for the court to enlarge its order of January 21, 2018, authorizing the employment special counsel McIntyre Law P.C., attorney Noble McIntyre, and co-counsel Aylstock, Witkin, Kreis & Overholtz PLLC. *See* Dckt. 93 (order employing).

The Chapter 7 Trustee argues that counsel had been employed to litigate a medical claim, but since moving to employ counsel, the Chapter 7 Trustee has learned that there is an additional medical claim against a separate defendant that Debtor employed special counsel pre-petition to litigate. The Chapter 7 Trustee presents that counsel was employed according to a contingency fee agreement (40%). The Chapter 7 Trustee seeks authorization for the counsel already employed to litigate the additional medical claim.

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.

At the January 11, 2018, the court found that employment of counsel was in the best interest of the estate, and the court authorized the employment of Noble McIntyre of McIntyre Law P.C. and co-counsel Justin Witkin of Aylstock, Witkin, Kreis & Overholtz PLLC. Dckt. 93. Now, the Chapter 7 Trustee has informed the court that there is an additional medical claim for counsel to litigate as part of their employment for the estate. The court finds that it is in the best interest of creditors and estate if counsel continue to litigate the additional medical claim.

The Motion is granted, and the court shall enter an order enlarging the prior employment order.

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 Enlarge Employment Order filed by Michael McGranahan ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Enlarge Employment Order of January 21, 2018 (Dckt. 93), is granted, and the Chapter 7 Trustee is authorized to employ McIntyre Law, P.C. and Aylstock, Witkin, Kreis & Overholtz, PLLC, as Special Counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Agreement filed as Exhibit 1, Dckt. 109, to litigate co-debtor Patricia Carroll's second personal injury medical claim.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

5. 18-90428-E-11 RANDHAWA TRUCKING, LLC
Brian Haddix

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-18 [17]

Final Ruling: No appearance at the July 12, 2018 hearing is required.

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 23, 2018. The court computes that 19 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 June 21, 2018.

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

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

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

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

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

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

6.	**18-90029-E-11** **AB-1**	**JEFFERY ARAMBEL** **Reno Fernandez**	**MOTION FOR COMPENSATION FOR ARCH & BEAM GLOBAL, LLC, OTHER PROFESSIONAL(S)** **6-21-18 [433]**

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 in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

Arch & Beam Global, LLC, the Financial Advisor, ("Applicant") for Jeffery Arambel, Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 29, 2018, through May 31, 2018. The order of the court approving employment of Applicant was entered on March 29, 2018. Dckt. 164. Applicant requests fees in the amount of $75,105.00 and costs in the amount of $540.33.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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 cab 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 analyzing assets, communicating with creditors, preparing for hearings, operating the business, analyzing tax consequences, preparing sales of real property, accounting, and other general business operations. The Estate has $300,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 6.4 hours in this category. Applicant assisted Client with administering the estate and property, including reviewing background information and docket items.

Efforts to Assess and Recover Property of the Estate: Applicant spent 8.3 hours in this category. Applicant assisted Client with analyzing assets, including assessing the value of estate assets available for sale and any likely return to creditors.

Meetings of and Communications with Creditors: Applicant spent 4.6 hours in this category. Applicant assisted Client with communications and meetings with creditors, including analyzing and commenting on proposed stipulations.

Assumption/Rejection of Leases and Contracts: Applicant spent 0.2 hours in this category. Applicant assisted Client with analyzing and assuming or rejecting leases and contracts.

Non-Working Travel: Applicant spent 17.2 hours in this category but billed for only 8.6 hours. Applicant assisted Client with time traveling to properties and court hearings.

Preparation For and Attendance at Court Hearings: Applicant spent 11.8 hours in this category. Applicant assisted Client with preparing for and attending court hearings, including analyzing court filings by other parties and pre-hearing dispositions.

Business Operations: Applicant spent 1.6 hours in this category. Applicant assisted Client with analyzing and determining operational needs, including gaining an understanding of potential cash needs.

Financing/Cash Collections: Applicant spent 8.8 hours in this category. Applicant assisted Client with analyzing its potential financing/cash needs, and attending calls and meetings with the financing broker (BizCap) regarding ultimate needs and workable structures.

Tax Issues: Applicant spent 3.1 hours in this category. Applicant assisted Client with analyzing tax situations, particularly property taxes, including multiple communications with Stanislaus County to determine the amount owed.

Real Estate: Applicant spent 37.8 hours in this category. Applicant assisted Client with analyzing real estate and particular sales, including meetings and calls with Client and actions related to real estate strategy, process, and review of documents, including tracking of progress.

Accounting/Auditing: Applicant spent 111.7 hours in this category. Applicant assisted Client with work related to all accounting operations, data entry, journal entries, accounting reporting, preparation, and in some cases reconstruction of books and records, month-end closing activities, including preparing monthly operating reports. Applicant reports that the accounting system was created from scratch, with a complete QuickBooks accounting being established.

Business Analysis: Applicant spent 1.9 hours in this category. Applicant assisted Client wit ha detailed analysis of its business, which was used for development of monthly operating reports.

Corporate Finance: Applicant spent 1.5 hours in this category. Applicant assisted Client with the review of historical data and establishing budgets.

Claims Administration and Objections: Applicant spent 2.3 hours in this category. Applicant assisted Client with analyzing the claims and register and individual claims, including the beginning work for acceptance or rejection.

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
Howard Bailey	70.1 hours	$425.00	$29,792.50
Matthew English	3.0 hours	$425.00	$1,275.00
Scott Geary	135.5 hours	$325.00	$44,037.50
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$75,105.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $540.33 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
IT Services		$60.00
Mileage		$394.58
Parking		$15.00
Tolls		$5.00
Transportation		$65.75
Total Costs Requested in Application		$540.33

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $75,105.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of $540.33 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes Debtor in Possession to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	$75,105.00
Costs and Expenses	$540.33

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Arch & Beam Global, LLC ("Applicant"), Financial Advisor for Jeffery Arambel, Debtor in Possession, ("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 Arch & Beam Global, LLC, is allowed the following fees and expenses as a professional of the Estate:
>
> Arch & Beam Global, LLC, Professional employed by Debtor in Possession
>
> Fees in the amount of $75,105.00
> Expenses in the amount of $540.33,

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

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay 80% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

7.	**18-90029-E-11** **MF-23**	**JEFFERY ARAMBEL** **Reno Fernandez**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ LLP FOR RENO F.R. FERNANDEZ III, DEBTOR'S ATTORNEY(S)** **6-21-18 [428]**

No 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 in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

Macdonald Fernandez LLP, the Attorney ("Applicant") for Jeffery Arambel, Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 9, 2018, through May 31, 2018. The order of the court approving employment of Applicant was entered on March 9, 2018. Dckt. 141. Applicant requests fees in the amount of $179,738.98 and costs in the amount of $3,442.48.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material

benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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 cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the

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

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

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

A review of the application shows that Applicant's services for the Estate include asset investigation, assumption and rejection of leases and contracts, case administration, obtaining authority to use cash collateral, claims analysis and objection, commencing this case, assisting with obtaining financing for Client, litigating an adversary proceeding and other contested matters, preparing a plan and disclosure statement, retaining professionals, and assisting with presenting sales of real property to the court. The Estate has $300,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial, as considered for an interim application and as reduced below, to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Investigation: Applicant spent 15.6 hours in this category. Applicant identified and marshaled the estate's assets, including identifying all of the estate's interests in real property, business entities, crop insurance claims, co-op revolvements and retains, stock, and other assets.

Assumption and Rejection of Contracts and Leases: Applicant spent 10.3 hours in this category. Applicant assisted Client in reviewing pre-petition agreements and seeking court authority to assume some of them. Specifically, Client south authority to assume pre-petition agreements with Crestmont Development, LLC, and Cushman & Wakefield while also seeking to employ both as

professionals of the estate. Applicant also analyzed issues related to outstanding escrows and additional sales that were pending on the petition date.

Case Administration: Applicant spent 97.0 hours in this category. Applicant evaluated Client's farming operations, reviewed and filed monthly operating reports, drafted status reports, handled issues relating to Client's bank accounts, and developed and implemented an overall strategy to manage the case.

Cash Collateral: Applicant spent 7.2 hours in this category. Applicant assisted Client with obtaining authority to use cash collateral, including negotiating a stipulation with Metropolitan Life Insurance Company for authority to use $75,000.00 of its cash collateral. Applicant also helped Client budget for the use of cash collateral and helped him understand his duties relating to the cash collateral.

Claims Analysis and Objections: Applicant spent 33.8 hours in this category. Applicant assisted Client before and after the claims bar date with analyzing claims, including negotiating a resolution of one claim that generated unencumbered funds for the estate.

Commencement of Case: Applicant spent 41.1 hours in this category. Applicant prepared and filed the petition, prepared and filed the schedules of assets and liabilities and statement of financial affairs, prepared and filed amended schedules, prepared the initial status report and appeared at a hearing on it, prepared for and appeared at the initial interview with the U.S. Trustee, prepared for and appeared at the meeting of creditors, educated Client about his duties, and assisted with issues regarding opening debtor in possession accounts.

In this case, the Original Schedules were grossly inadequate. The deficiencies have been discussed by the court, including the Civil Minutes for the February 15, 2018 Status Conference. As the court noted in the Civil Minutes for the hearing on authorization to employ counsel for Debtor in Possession:

> The court's review of the Schedules and Statement of Financial Affairs **raises serious concerns about** the information provided therein, the accuracy of such information, and the **ability of Arambel and counsel** to prosecute these $200 million real estate cases. As discussed in the Minutes, the information stated under penalty of perjury is inconsistent. Though presented to the court as a $200 million real estate reorganization, even after an extension of time, the Schedules are confusing, do not clearly identify the real estate assets of each Debtor, and have handwritten corrections to prior, out-of-date financial statements. The two debtors have merely taken Arambel's personal financial statement from March 2017 and presented it as Arambel's personal financial statement as of the January 2018 filing of his case and purportedly as the corporation's financial statement as of the January 2018 filing of the Filbin Chapter 11 case.
>
> **It appears that the two debtors and counsel may believe that the legal separateness of Arambel personally and Filbin are irrelevant, because they want it to be such.** Unfortunately, their apparent decision that the legal separateness and obligations of the two debtor in possession fiduciaries is irrelevant is not such for these two fiduciaries as debtors in possession, nor as debtors in accurately completing

the Schedules and Statements of Financial Affairs. Taken at face value, Arambel states under penalty of perjury that he has interests in property with a value of $190,389,565.00 and that he is the only person with any interest in those properties. 18-90029; Schedule A/B, Dckt. 53 at 3. However, Filbin states under penalty of perjury on its Schedule A/B that it is the owner of the same properties having a value of $190,389,565.00. 18-90030; Schedule A/B Question 54.55.1, Dckt. 40 at 4.5. Both cannot be the sole owners of the almost $200 million properties.

On his Statement of Financial Affairs, Arambel states that he had gross income of $5,100,000.00 in 2017, $5,527,744.00 in 2016, and $9,904,315.00 in 2015. 18-90029; Statement of Financial Affairs Question 4, Dckt. 53 at 46.47. For Filbin, it states having gross income of $97,200.00 in 2017, $350,000.00 in 2016, and $107,836.00 in 2015. 18-90030; Statement of Financial Affairs Question 1, Dckt. 40 at 23. **Though purporting to have the same assets, it appears that substantially all of the income from the properties is allocated to Arambel.**

Though there being $200 million of properties and millions of dollars in income, Filbin reports that Arambel is the only person who has any of that debtor's books and records for the two years prior to the filing of the bankruptcy case. The exception is that a CPA is listed for preparation of the 2015 tax return. 18-90030; Statement of Financial Affairs Question 26, Dckt. 40 at 28. It does not appear reasonable that there are no other professionals involved in keeping the books and records of the $200 million real estate and farming enterprise.

As discussed in the Civil Minutes, **it appears that some of Arambel's personal expenses are being paid by Filbin, notably Arambel has no transportation expenses, though listing $480.00 for vehicle insurance**. 18-90029; Schedule J, Dckt. 53 at 44.

The credibility of Arambel falls further in reviewing Schedule J in which he purports to have $0.00 in expenses for: (1) clothing, (2) personal care products and services, (3) medical and dental expenses, transportation, and entertainment. Id. Further, Arambel states under penalty of perjury on Schedules I and J that he pays no federal income tax, no state income tax, no Social Security tax, and no self-employment tax. *Id*. at 37–44.

. . .

On March 1, 2018, **Debtor in Possession** filed a Status Report. Dckt. 112. It begins comparing how Chapter 11 cases are handled in the District of Delaware and the Southern District of New York, **indicating that accurate, truthful Schedules and Statements of Financial Affairs are not required for months or up to a year** in those cases. Debtor in Possession comments that the judges in the Eastern District of California do not follow such practices.

Thus, **it appears that Debtor felt compelled to file the inaccurate Schedules and Statement of Financial Affairs in this case**.

Debtor did not file a second motion to extend the time to file accurate, truthful Schedules and Statement of Financial Affairs, instead electing to file the Schedules and Statement of Financial Affairs that caught the eye of, and spurred the ire of, the court leading to setting this Status Conference rather than granting the *Ex Parte* Motion to Employ Counsel.

Civil Minutes, Dckt. 138 (emphasis added).

Amended Schedules were filed on March 1, 2018. Dckt. 114.

In reviewing the billings, the court notes that the following billings were charged relating to the above inadequate schedules and statement of financial affairs:

	Hours		Rate	Total
2/12/2018	1.8	Review, analyze and comment on questionnaire, information and documents provided for schedules (1.6); correspondence with J. Arambel re post-petition transactions, cash collateral, bank statements and other issues (0.2).	$375.00	$ 675.00
2/12/2018	0.09	Review and analyze questionnaire and information and documents provided for schedules.	$375.00	$ 337.50
2/14/2018	1.3	Draft and revise schedules, statement of financial affairs and other initial documents.	$375.00	$ 487.50
2/14/2018	5.9	Draft and revise schedules, statement of financial affairs and other initial documents (4.6); review and analyze source documents (1.3).	$375.00	$ 2,212.50
		Total Billed for Inadequate Schedules		$ 3,712.50

The court reduces the fees by $3,712.50 for the fees relating to the deficient schedules and statement of financial affairs. The court notes that Applicant has billed, and is being paid (on an interim basis) for the work done to file the corrected schedules.

ΔIP Financing: Applicant spent 11.4 hours in this category. Applicant assisted Client with obtaining financing or exit financing chiefly by responding to inquiries by the estate's loan broker (Business Capital) and its business advisor (Arch & Bream Global, LLC). Applicant also assisted with obtaining a commitment for certain crop advances that Client and his professionals later declined to use.

Adversary Proceedings and Contested Matters: Applicant spent 25.4 hours in this category. Applicant notes that Adversary Proceeding No. 18-09002 (*Lopez v. Arambel*) is now pending, and Applicant

has managed the impact on the estate of litigation involving JEA2, LLC, as well as analyzing potential avoidance actions and other matters.

Plan and Disclosure Statement: Applicant spent 18.5 hours in this category. Applicant developed a plan of reorganization and disclosure statement, although a plan has not been filed yet. Applicant also moved for exclusivity periods to be extended.

Relief from Stay Matters: Applicant spent 7.6 hours in this category. Applicant assisted with motions for relief that have been filed and negotiated a stipulation regarding one creditor's motion for relief.

Retention of Professionals: Applicant spent 131.1 hours in this category. Applicant assisted with obtaining authority to employ Arch & Beam Global, LLC; Cushman & Wakefield U.S. Inc.; Pearson Realty; Business Debt Solutions, Inc. (Business Capital); Braun International; Judith Callaway, and Applicant itself. Applicant responded to many objections raised by creditors and complied with U.S. Trustee guidelines for cases exceeding $50 million in assets and liabilities.

Use, Sale, or Lease of Assets: Applicant spent 132.2 hours in this category. Applicant has obtained court authority to sell various pieces of real property, including Home Ranch, Howard Ranch, and 149 acres of land in the Arambel Business Park. Applicant is also assisting with potential future sales.

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**
Iain Macdonald	63.9 hours	$375.00	$23,962.50
Reno Fernandez	255.1 hours	$375.00	$95,662.50
Matthew Olson	203.1 hours	$275.00	$55,852.50
Samantha Brown	9.1 hours	$90.00	$819.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$176,296.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,442.48 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Facsimile	$0.10	$54.70
Postage		$613.41
Photocopying	$0.10	$1,448.20
Photocopying (Outsourced)		$41.23
FedEx/Courier		$42.90
Filing Fees		$449.00
Credit Report/UCC-1 Search		$47.00
Conference Calls		$74.11
Travel/Parking		$120.94
Certified Court Copies/Court Transcripts		$550.99
Total Costs Requested in Application		$3,442.48

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 Interim Fees in the amount of $176,026.48 are approved pursuant to 11 U.S.C. § 331, with fees of $3,712.50 disallowed, and subject to final review pursuant to 11 U.S.C. § 330, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include facsimile and conference calls. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows $128.81 of the requested costs.

First Interim Costs in the amount of $3,313.67 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes Debtor in Possession to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	$176,026.48
Costs and Expenses	$ 3,313.67

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. Fees in the amount of $3,712.50 are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Macdonald Fernandez LLP ("Applicant"), Attorney for Jeffery Arambel, Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Macdonald Fernandez LLP, Professional employed by Debtor in Possession
>
> Fees in the amount of $176,026.48
> Expenses in the amount of $3,313.67,

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

IT IS FURTHER ORDERED that Applicant is authorized to, and shall first apply the retainer of $20,733.00, and Debtor in Possession is authorized to pay the balance from unencumbered monies of the bankruptcy estate.

IT IS FURTHER ORDERED that fees of $3,712.50 and the costs of $128.81 are not allowed by the court.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay 80% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

8. 18-90030-E-11 FILBIN LAND & CATTLE CO., INC.
Michael St. James

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
1-17-18 [1]

Debtor's Atty: Iain A. Macdonald, Matthew J. Olson, Michael St. James

Notes:
Continued from 6/28/18 to be heard in conjunction with the pending motion to sell property of the estate.

Ex Parte Application for Order Re-Scheduling and Specially Setting Hearings filed 7/5/18 [Dckt 205]

Order Continuing to 10:30 on 7/19/18 Specially Set Hearing [Dckt 209]

JULY 12, 2018 STATUS CONFERENCE

xxxxxxxxxxxxxxxxxx

9.	**18-90030-E-11** **STJ-6**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR** **6-21-18 [185]**

Final Ruling: No appearance at the July 12, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance at the July 12, 2018 hearing.

The Motion to Extend Exclusivity Period is continued to 10:30 a.m. on August 23, 2018.

Jeffery Arambel ("Debtor in Possession") requests that the court extend the time period in 11 U.S.C. § 1121(b) & (c)(3) by 120 days pursuant to 11 U.S.C. §§ 105(a) and 1121(d). Debtor in Possession argues that this is a large case (more than $200 million in assets and $50 million in debt) that has several sales of real property either closing or pending. In particular, Debtor in Possession stresses that the non-governmental claim deadline passed recently, and several claims were filed around it, including one claim for $40 million that Debtor in Possession has not had sufficient time to analyze.

APPLICABLE LAW

Debtor in Possession does not direct the court to the provisions of 11 U.S.C. § 105(d), in which Congress provides that the district court or bankruptcy court judge before whom the bankruptcy case is pending:

> (d) The court, on its own motion or on the request of a party in interest–
>
> > (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
> >
> > (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that–
> >
> > > (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
> > >
> > > (B) in a case under chapter 11 of this title–
> > >
> > > > **(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;**
> > > >
> > > > (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
> > > >
> > > > **(iii) sets the date by which a party in interest other than a debtor may file a plan;**
> > > >
> > > > (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
> > > >
> > > > (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
> > > >
> > > > (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d) (emphasis added). Though not cited to by Debtor in Possession, the court considers this basis.

11 U.S.C. § 1121 creates statutory deadlines and dates when persons other than the debtor in possession may file a plan, and 11 U.S.C. § 105(d) provides a statutory basis for the court to modify those dates.

Section 1121 states, in part:

> (b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.
>
> . . . .
>
> (d) (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsection (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
>
> (2) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(b), (d). A party moving for the period to be extended must establish that there is cause for an extension. *See In re New Meatco Provisions, LLC*, No. 2:13-bk-22155-PC, 2014 Bankr. LEXIS 914, at *7–8 (Bankr. C.D. Cal. March 10, 2014) (citing *In re Dow Corning Corp.*, 208 B.R. 661, 663 (Bankr. E.D. Mich. 1997); *In re Newark Airport/Hotel Ltd. P'ship*, 156 B.R. 444, 451 (Bankr. D.N.J. 1993), *aff'd*, 155 B.R. 93 (D.N.J. 1993)).

Determining whether cause exists depends upon the facts presented to the court. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006). A number of factors may indicate cause, including:

A. The size and complexity of a case;

B. The necessity of sufficient time to permit a debtor to negotiate a plan of reorganization and to prepare adequate information;

C. The existence of good faith progress toward reorganization;

D. Whether a debtor is paying bills as they become due;

E. Whether a debtor demonstrates reasonable prospects for filing a viable plan;

F. Whether a debtor has made progress in negotiating with creditors;

G. How much time as elapsed in the case;

H. Whether a debtor seeks an extension to pressure creditors into submitting to demands; and

I. Whether an unresolved contingency exists.

208 B.R. at 664–65; *see also Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002) (explaining that there are several factors analyzed commonly upon an extension request).

CONTINUANCE OF HEARING

The hearing on the Motion has been continued to 10:30 a.m. on August 23, 2018, by prior order. Dckt. 206.

10.	**18-90030-E-11** **STJ-7**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**MOTION TO APPROVE SALE AGREEMENT AND BIDDING PROCEDURES** **6-21-18 [188]**

Final Ruling: No appearance at the July 12, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance at the July 12, 2018 hearing.

The hearing on the Motion to Sell Property is continued to 10:30 a.m. on July 19, 2018.

The Bankruptcy Code permits Filbin Land & Cattle Co., Inc., Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell ten acres out of ninety-seven acres of unimproved real property in Westley, California ("Property").

CONTINUANCE OF HEARING

The hearing has been continued to 10:30 a.m. on July 19, 2018, by prior order. Dckt. 208.

11.	**18-90030-E-11 STJ-8**	**FILBIN LAND & CATTLE CO., INC. Michael St. James**	**MOTION TO SELL FREE AND CLEAR OF LIENS 6-21-18 [194]**

Final Ruling: No appearance at the July 12, 2018 hearing is required.

Local Rule 9014-1(f)(2) Motion. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance at the July 12, 2018 hearing.

The hearing on the Motion to Sell Property is continued to 10:30 a.m. on July 19, 2018.

The Bankruptcy Code permits Filbin Land & Cattle Co., Inc., Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell ten acres out of ninety-seven acres of unimproved real property in Westley, California ("Property").

CONTINUANCE OF HEARING

The hearing has been continued to 10:30 a.m. on July 19, 2018, by prior order. Dckt. 207.

12. 18-90355-E-7 DENISE ZIEHLKE MOTION TO COMPEL ABANDONMENT
MRG-1 Michael Germain 6-22-18 [14]

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

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 22, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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 Denise Ziehlke ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property commonly known as a contractual right to sell Avon Products as an independent contractor pursuant to a revocable license ("Property"). Debtor's Declaration has been filed

in support of the Motion and states that the Property generates little in net income, for example, $12.54 in April 2018 and $113.11 in March 2018.

The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the Property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Denise Ziehlke ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as a contractual right to sell Avon Products as an independent contractor pursuant to a revocable license and listed on Schedule B (Dckt. 19) by Debtor is abandoned by Irma Edmonds ("the Chapter 7 Trustee") to Denise Ziehlke by this order, with no further act of the Chapter 7 Trustee required.

13. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **MOTION FOR ORDER AUTHORIZING DISTRIBUTIONS TO HOLDERS OF CHAPTER 11 ADMINISTRATIVE CLAIMS**
WFH-14 **David Johnston**
6-28-18 [761]

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. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held and that any party opposing must appear at the hearing. Based upon language that appearance at the hearing is necessary, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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 holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Authorization to Distribute to Holders of Chapter 11 Administrative Claims 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 Authorization to Distribute to Holders of Chapter 11 Administrative Claims is granted.

Michael McGranahan ("the Chapter 7 Trustee") moves for authorization to make distributions to holders of Chapter 11 administrative claims. The Chapter 7 Trustee notes that this case was converted

from Chapter 11 to Chapter 7 on June 26, 2017, and at that time professionals of the estate—Meegan, Hanschu & Kassenbrock and Ryan, Christie, Quinn & Horn—obtained allowance of fees and costs but were not paid the full amount allowed. Now, the Chapter 7 Trustee argues that those remaining allowed amounts are unpaid Chapter 11 administrative claims.

The Chapter 7 Trustee notes also that there are outstanding tax payments owed to the Internal Revenue Service ("IRS") in the amount of $64,890.00 (and penalties and interest of $26,028.80) and owed to the Franchise Tax Board ("FTB") in the amount of $36,966.00 (and penalties and interest of $12,381.34). The Chapter 7 Trustee is seeking to have the penalty portion of the taxes abated.

The Chapter 7 Trustee argues that he must file a tax return for the Estate for the tax year ending July 31, 2018, and if he is able to pay Chapter 7 & 11 administrative claims before that deadline, then the Estate will receive deductions offsetting income and eliminating the Estate's tax liability for 2017/2018 tax year. Payment after the deadline will not result in any deductions.

The Chapter 7 Trustee seeks authority to pay 75% of the accrued Chapter 11 professional administrative expenses and 100% of the tax portion of administrative claims, excluding interest and penalties.

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 Chapter 7 Trustee has demonstrated that payment of the professional fees and taxes will result in such a significant deduction for the Estate's tax liability that the Estate will not have a tax liability for the 2017/2018 tax year.

The Chapter 7 Trustee having demonstrated that payment of the administrative claims is necessary, the court finds that payment of the claims is necessary for Debtor and provides benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative claims in the amounts of:

A. $78,564.00 to Meegan, Hanschu & Kassenbrock;

B. $29,696.63 to Ryan, Christie, Quinn & Horn;

C. $64,890.00 to the Internal Revenue Service; and

D. $36,966.00 to the Franchise Tax Board.

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 Authorization to Distribute to Holders of Chapter 11 Administrative Claims filed by Michael McGranahan ("the Chapter 7 Trustee")

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

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay:

A. $78,564.00 to Meegan, Hanschu & Kassenbrock;

B. $29,696.63 to Ryan, Christie, Quinn & Horn;

C. $64,890.00 to the Internal Revenue Service; and

D. $36,966.00 to the Franchise Tax Board.

14. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **CONTINUED MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE(S)**
MDM-4 **David Johnston** **5-30-18 [746]**

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 May 30, 2018 . By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of First Interim Trustee Fees is granted.

Michael McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Lawrence Souza and Judith Souza ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. First Interim Fees in the amount of $20,000.00 are requested for the period June 26, 2017, through May 25, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 case administration, asset analysis/recovery, asset disposition and business operations. The Estate has $529.718.29 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Case Administration: Applicant managed Chapter 11 rents account, a proceeds account and Social Security account.

Asset Analysis/Recovery: Applicant employed accountants to prepare tax analysis for properties.

Asset Disposition: Applicant analyzed the rents collected during the Chapter 11 to determine who has liens against funds, in what amounts, and in what order of priority.

Business Operations: Applicant operated business of collecting rents and paying expenses on the properties.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $47,500.00	$38,430.94

Calculated Total Compensation	**$44,180.94**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$44,180.94
Less Previously Paid	$0.00
Total First Interim Fees Requested	$20,000.00

The fees are computed on the total sales generated $818,618.88 of net monies (exclusive of these requested fees and costs), with an estimated gross value of $529,718.29 remaining in claims currently being pursued.

CONTINUANCE OF HEARING

On June 18, 2018, Applicant filed an Ex Parte Application to continue the hearing. Dckt. 753. Applicant argues that a motion for approval of a distribution to Chapter 11 administrative claims will be set for July 12, 2018, and upon suggestion of the Office of the U.S. Trustee, this matter should be continued to then (or later) as well. *Id.*

The court granted the ex parte request and continued the hearing to 10:30 a.m. on July 12, 2018. Dckt. 755.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $20,000.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, are 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.

In this case, the Chapter 7 Trustee currently has $818,618.88 of unencumbered monies to be administered.

This case has required significant work by the Chapter 7 Trustee, with full requested amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees $20,000.00

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 Motion for Allowance of Fees and Expenses filed by Michael McGranahan, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Michael McGranahan, the Chapter 7 Trustee

Fees in the amount of $20,000.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance 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.

15.	**16-90083-E-7** **SSA-19**	**VALLEY DISTRIBUTORS, INC.** **Iain Macdonald**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PHOENIX BUILDING, INC.** **6-19-18 [337]**

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 19, 2018. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Phoenix Building, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an outstanding account receivable on which Settlor has been making irregular payments.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 340):

A. Settlement payment of $13,617.93, reflecting a $2,000.00 discount on the outstanding balance of the account receivable;

B. Payment tendered by June 2018;

C. Each party to bear its own fees and costs; and

D. Settlor to be responsible for all reasonable fees and costs incurred by Movant and counsel if there is a default in the agreement.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that settling now will be more advantageous than continuing to monitor the account or proceed to litigation, but Movant has not actually addressed whether litigation would be successful against Settlor.

Difficulties in Collection

Movant argues that the cost of collection would point in favor of settling now, but again, Movant has not actually addressed if there is any anticipated difficulty anticipated in collecting from Settlor. The court notes, however, that Movant has presented that the settlement is proposed because Settlor has been making irregular payments on the account receivable.

Expense, Inconvenience, and Delay of Continued Litigation

Movant anticipates that litigation could cost from $2,500 to $45,000, and the settlement provides funds instead by the end of June 2018.

Paramount Interest of Creditors

Movant argues that settling enhances the Estate while preventing litigation costs.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it generates immediate funds against an outstanding account that has been paid down irregularly while evading potential costs and delay from litigation. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Phoenix Building, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 340).

16. 18-90286-E-7 TOBY/CAROLYN ROBERTS MOTION TO COMPEL ABANDONMENT
MRG-1 Michael Germain 6-21-18 [12]

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 21, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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 Toby Roberts and Carolyn Roberts ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property commonly known as a cleaning service business operated by co-debtor Carolyn Roberts under the name of "On the Spot Cleaning" and its assets, and a separate furniture building business, called "Reclaimed Woods Tables" and its assets ("Property"). Debtor filed Declarations in support of the Motion and stating how the Property generates net income from On the Spot Cleaning of $322.08 in March 2018 and $331.00 in February 2018 and from Reclaimed Woods Tables of $1,160.99 in March 2018 and $2,197.00 in February 2018.

The Chapter 7 Trustee has filed a Report of No Distribution in this case. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Toby Roberts and Carolyn Roberts ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as a cleaning service business operated by co-debtor Carolyn Roberts under the name of "On the Spot Cleaning" and its assets, and a separate furniture building business, called "Reclaimed Woods Tables" and its assets and listed on Schedule B by Debtor is abandoned by Irma Edmonds ("the Chapter 7 Trustee") to Toby Roberts and Carolyn Roberts by this order, with no further act of the Chapter 7 Trustee required.