UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 16, 2020 at 10:30 a.m.

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1. **13-92200-E-7** **WILLIAM CAVANAGH** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT INSURANCE LAWSUIT AGREEMENT WITH AND/OR MOTION FOR COMPENSATION FOR E. GERARD MANNION, SPECIAL COUNSEL(S)**
HCS-5 **Amanda Billyard** **6-17-20 [120]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2020. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise and Compensation is denied.

Gary Farrar, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with American National Property and Casualty Company ("ANPAC"),

Pegasus, and Optum ("Settlors"). The claims and disputes to be resolved by the proposed settlement are the insurance lawsuit of *William G. Cavanaugh v. American National Property and Casualty Company, et al.*, United States District Court, Eastern District of California, Case No. 15-cv-01177 (the "Insurance Lawsuit"); and liens on the proceeds of the recovery in the Insurance lawsuit, held by Optum and Pegasus, for $10,000 each. Moreover, Movant requests authority to compensate the estate's special counsel.

Movant filed a Memorandum of Points and Authorities ("MPA") in support of the Motion. Dckt. 122. Movant has also filed the Declarations of Garry F. Farrar, Dana A. Suntag, and Gerrard Mannion in support of this Motion. Dckts. 123, 124, 125, 129.

INSUFFICIENT NOTICE OF MOTION

Movant provided 29 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Applicant has provided 6 fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

REVIEW OF THE MOTION

Terms of the Compromise

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 A in support of the Motion, Dckt. 126):

A. ANPAC will pay to the Trustee the sum of $100,000.00.

B. Within seven (7) days of receiving the payment, the Trustee shall dismiss the appeal in the Insurance Lawsuit with prejudice, and without fees or costs on either side.

C. Defendants shall not be obligated to any party relating to the bankruptcy case for sums beyond what is detailed in the Settlement Agreement, and they shall not file claims in the Bankruptcy Action.

D. Movant and Settlor release one another from all claims related to this matter.

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 acknowledges that the two principal arguments made as to why he should prevail in the Insurance Lawsuit appeal are novel, with no supporting case law. MPA, Dckt. 122, p. 8. Thus, his probability of success in the appeal is slim, and as such, the Settlement Agreement is in the best interest of the bankruptcy estate. *Id*.

Difficulties in Collection

Movant finds no reason that the defendants in the Insurance Lawsuit would be unable to respond to a judgment, so this factor is insignificant. *Id*.

Expense, Inconvenience, and Delay of Continued Litigation

The appeal is at its inception, and could require up to 18 months of litigation until a decision is reached. *Id*., p. 9. The bankruptcy case was commenced six and a half years ago, and the estate has no other assets to pay counsel. *Id*. The uncertainty of verdict and the time required for the trial makes the expense, inconvenience, and delay of continued litigation too high. *Id*.

Paramount Interest of Creditors

The Compromise would allow the estate to immediately collect the gross amount of $100,000.00. After the Optum and Pegasus liens are paid out at $10,000.00 each, the Trustee is still left with a sufficient amount to pay reduced expenses and return a reasonable dividend to unsecured creditors. *Id*., p. 9-10.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the appeal would cost the estate unnecessary time and funds that could otherwise be distributed to provide for administrative expenses and unsecured creditors. This part of the Motion is granted.

Special Counsel Compensation

E. Gerrard Mannion, the Special Counsel ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 29, 2015, through May 28, 2020. The order of the court approving employment of Applicant was entered on November 13, 2015. Dckt. 50. Applicant requests fees in the amount of $17,500.00 and costs in the amount of $22,078.34.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include prosecution of a claim against Coulter's Insurance Carriers, defended against a motion to dismiss, motion for judgment on the pleadings, and a motion for summary judgment, filed an appeal to the Ninth Circuit and participated in mediation, and assisted in reaching a compromise. 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.

Insurance Litigation: Applicant spent a total of 176 hours prosecuting the case. Applicant filed the lawsuit, prepared and analyzed the claims, took depositions, responded to written discovery requests, opposed motions for summary judgment, researched novel legal arguments, filed a notice of appeal, corresponded with Trustee's attorney and Trustee, opposed Defendant's Motion for Judgment on the Pleadings, opposed a Motion to Amend, and attended a joint status conference in person.

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**
E. Gerrard Mannion	176	Cont. Fee Reduced	$17,500.00
	0	$0.00	$0.00
Total Fees for Period of Application			$17,500.00

The court notes that Applicant testifies in his Declaration to having spent 176 hours on this particular case. *See* Applicant's Decl., Dckt. 125, Trustee's Decl., Dckt. 123 Applicant originally took the case on a contingency fee basis for 50% of recovery. *Id.* Applicant would have been entitled to a contingency fee of 50% of the gross recovery, which would be $50,000.00. *Id*. However, Applicant agreed to accept a reduced rate in the amount of $17,500.00 in order to allow the compromise to go forward. *Id.*

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $22,078.34 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Filing Fees, Discovery, Postage, and Mediation		$22,078.34
		$0.00

Total Costs Requested in Application	$22,078.34

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $17,500.00 for its fees incurred for Client. First and Final Fees in the amount of $17,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $22,078.34 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$17,500.00
Costs and Expenses	$22,078.34

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

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

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

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

IT IS ORDERED that the Motion for Approval of Compromise between Movant and American National Property and Casualty Company ("ANPAC"), Pegasus, and Optum ("Settlors") 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 A in support of the Motion (Dckt. 126).

IT IS FURTHER ORDERED that E. Gerrard Mannion is allowed the following fees and expenses as a professional of the Estate:

E. Gerrard Mannion, Professional employed by the Chapter 7 Trustee

Fees in the amount of $17,500.00
Expenses in the amount of $22,078.34,

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

IT IS FURTHER ORDERED that Trustee is authorized to disburse the following amounts pursuant to the settlement:

Payee	**Amount**
Pegasus	$10,000
Optum	$10,000
Mannion	$17,500 in fees and $22,078.34 in costs.

2. 19-90400-E-7 BLF-5 | **JUSTAN JOHNSON** Steve Altman | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JUSTAN A. JOHNSON** **6-1-20 [64]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 |Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2,2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Justan Johnson ("Settlor"). The claims and disputes to be resolved by the proposed settlement are controversies regarding the non-exempt equity in the real property located at 5112 Soave Lane, Salida, California ("Property").

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 A in support of the Motion, Dckt. 68):

A. Debtor will pay a settlement payment in the amount of $11,500.00 in the form of a check to Chapter 7 Trustee at the time of signing the agreement.

B. Debtor will not claim any part of the above settlement payment as exempt.

C. The settlement is conditioned on the approval of the bankruptcy court.

D. Each party will sign further documents and take further action to effectuate the agreement.

E. Debtor will release the estate and Chapter 7 Trustee from any and all future claims regarding this dispute, and Chapter 7 Trustee shall provide a reciprocal release for Debtor. The releases shall have no effect if the compromise is not approved.

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.

Under the settlement, Movant shall recover $11,500.00 in satisfaction of the Estate's claim for recovery of the property. Movant asserts that the property can be recovered for the Estate for the claim it has against Settlor. This proposed settlement allows Movant to recover for the Estate $11,500.00 without further cost or expense.

Under the terms of the settlement, all claims of the Estate are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Movant argues that the compromise for $11,500.00 recovery is the best for the Estate because it avoids delay, costly litigation, or having to go forward and attempt to sell the property which would diminish the Debtor's surplus. The recovery is sufficient to pay all unsecured claims and administrative expenses.

Difficulties in Collection

Movant anticipates no difficulty in collection because Debtor will have already paid before the hearing.

Expense, Inconvenience, and Delay of Continued Litigation

It would be overly burdensome to attempt to sell the property or obtain a judgment when the amount of unsecured claims is only $2,952.54.

Paramount Interest of Creditors

Significant time and administrative expense is saved by allowing the collection through the compromise. Thus, the Compromise in the best interest of the Creditors.

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 all unsecured claims and administrative expenses can be paid through the compromise without additional delay or expense. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Justan Johnson ("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 A in support of the Motion (Dckt. 68).

3. **19-91004-E-7** **GEORGETTE DAGIO** **MOTION TO SELL**
BLF-2 **Pro Se** **6-2-20 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate's non-exempt interest in real property commonly known as 845 Penn Avenue, Turlock, California ("Property").

The proposed purchaser of the Property is Georgette Dagio ("Debtor"). The complete terms of the sale can be found in the Sale Agreement in Exhibit B, Dckt. 35. The terms of the Sale Agreement are summarized below:

A. Debtor shall purchase the property from the bankruptcy estate for $16,000.00 in the form of a cashier's check payable to Chapter 7 Trustee at the time of signing the agreement.

B. Because Debtor already has title to the property, the sale will not be conducted through escrow or require the service of a title company.

C. The purchase amount will be returned to Debtor if the agreement is not approved by the court, the sale is reversed on appeal, or the court accepts a higher bidder.

D. Debtor releases Chapter 7 Trustee and the estate from all claims arising from or relating to the property.

E. Debtor is purchasing the property "as-is."

Proposed Overbidding Procedure

The Chapter 7 Trustee has proposed the following overbid procedure:

1. the first overbid must be in the amount of at least $93,000.00 ($2,000.00 greater than the purchase price plus Debtor's exemption amount of $75,000.00).

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Trustee believes the sale will generate more revenue for the estate than efforts to market the property, and allows Debtor to remain in her home.

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

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

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

IT IS ORDERED that Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Georgette Dagio ("Buyer"), the estate's nonexempt interest in real property commonly known as 845 Penn Avenue, Turlock, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $16,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 35, and as further provided in this Order.

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

4. **20-90210-E-11 AF-3** | **JOHN YAP AND IRENE LOKE** | **Arasto Farsad** | **CONTINUED MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON AND/OR MOTION TO VALUE COLLATERAL OF THE PNC FINANCIAL SERVICES GROUP, INC., MOTION TO VALUE COLLATERAL OF PERSOLVE, LLC**
4-9-20 [33]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's in Possession, Creditor, parties requesting special notice, and Office of the United States Trustee on April 9, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral and Secured Claim of Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC is xxxxx.

Joinder of Multiple Parties One Contested Matter

The present Motion (a Contested Matter as provided in Federal Rule of Bankruptcy Procedure 9014) seeks relief pursuant to 11 U.S.C. § 506(a) against two different persons concerning two different claims. While in an adversary proceeding Federal Rule of Civil Procedure 20, as incorporated into Federal Rule of Bankruptcy

Procedure 7020) permits the joinder of multiple parties in one adversary proceeding if there is a common question of law or fact to all defendants, Federal Rule of Bankruptcy Procedure 7020 is not automatically incorporated into contested matter practice. Fed. R. Bankr. P. 9014(c).

However, the court may, and does in this Contested Matter, make Federal Rule of Bankruptcy Procedure 7020 and thereby Federal Rule of Civil Procedure 20 applicable to allow for the permissive joinder of Creditors Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC as respondent parties herein.

REVIEW OF MOTION

The Motion to Value filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") to value two secured claims. The Motion is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 35.

Debtor is the owner of the subject real property commonly known as 1106 Lovell Avenue, Campbell, California ("Property"). Debtor seeks to value the Property at a fair market value of $900,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

IDENTITY OF CREDITORS TO HAVE SECURED CLAIMS VALUED

The Motion states that there are two mortgages/deeds of trust recorded against the Property and a judgment lien. These encumbrances are identified by the Debtor in Possession as follows.

Senior Deed of Trust

The First Deed of Trust is stated to have originated with Countrywide Home Loans, Inc. in the amount of $565,000.00. A copy of the Countrywide Deed of Trust is provided as Exhibit 1. Dckt. 36. The Motion then states that this note and deed of trust were assigned to The Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative loan Trust 2007-OH2, Mortgage Pass-Through Certificates, Series 2007, and that Mellon NewRez LLC, dba Shellpoint Mortgage Servicing for Bank of New York Mellon, as trustee.

No proof of claim has been filed by Bank of New York Mellon, as Trustee.

Second Deed of Trust

The Motion then identifies a Second Deed of Trust securing an obligation originally owed to National City Bank in the original amount of ($154,950.00). The Motion then states PNC Financial Services Group, Inc. acquired National City Bank.

The Motion then goes further, stating that a company named Dreambuilder Investments, LLC claims to hold ownership of the note secured by the Second Deed of Trust.

Debtor in Possession asserts that this claim is at least ($131,152.00).

No documents showing any assignments or transfers of the deed of trust have been filed.

No proof of claim has been filed for this debt.

The identity of the actual creditor whose claim is to be valued has not been made by the Debtor in Possession.

Judgment Lien

The third obligation encumbering the Property is identified as the judgment lien of Persolve, LLC, which is stated to be in the approximate amount of ($36,670.64). This judgment lien is junior in priority to the two deeds of trust, having been recorded on December 31, 2014.

Proof of Claim No. 1-1 has been filed by Persolve, LLC, asserting an unsecured claim in the amount of ($53,535.09).

OPPOSITION

Creditor Bank of New York Mellon ("Mellon") filed an Opposition. Dckt. 59. First, Creditor opposes on the basis that Debtor's valuation amount is based on a verbal price opinion after review of the Property, without including a formal written broker's Price Opinion or Appraisal. *Id*. at p. 2. Creditor has obtained a Broker's Price Opinion ("BPO") valuing the Property at $1,280,000 as of April 2, 2020. *Id*. Thus, Creditor argues the value of the Property is a material fact in dispute, and requests the opportunity to have an interior inspection verified appraisal. *Id*.

Next, Creditor opposes to the extent that the motion seems to improperly value the Property as of the bankruptcy filing date as opposed to at or near confirmation. *Id*. at p. 3. Debtor's value does not include an "as of" date, and Debtor has not filed a proposed Chapter 11 Plan. *Id*. Creditor points out that a valuation in a Chapter 11 case should be done at or near the time of confirmation. *Id*.

Third, Creditor reserves its right to object to any subsequently filed Chapter 11 Plan based on the Absolute Priority Rule, the violation of 11 U.S.C. 1123(b)(5), lack of feasibility, bad faith, and any other grounds that may exist to object to the Plan.

Lastly, Creditor also reserves the right to make an election under 11 U.S.C. 1111(b). *Id*.

DISCUSSION

Creditor Bank of New York Mellon, as trustee, the senior in priority first deed of trust, secures a claim with a balance of approximately $978,867.00. Schedule D, Dckt. 22. Creditor PNC's second deed of trust secures a claim with a balance of approximately $154,950.00. *Id*. Creditor Persolve, LLC has a judgment lien against the Property in the amount of $32,671.00.

The Motion states that Debtor in Possession requested that a local Realtor provide an opinion as to value of the Property. The Realtor, Regina Zabarte, stated (to an unidentified person) that the property has a value of $900,000. The Debtor in Possession believes that Ms. Zabarte's opinion is accurate. The Debtor in Possession conducted additional research from other third parties identified as Zillow.com and Redfin.com.

There is a significant missing piece to the puzzle - who is the creditor who actually holds the note secured by the second deed of trust. It could be PNC Financial Services Group, Inc. Or, it could be Dreambuilder Investments, LLC. No evidence of the record title is provided and it appears that no discovery has been done for Debtor in Possession to identify the real party in interest.

Declaration of Nancy Weng

On May 29, 2020, Debtor filed the Declaration of Nancy Weng, Esq. Dckt. 74. Ms. Weng testifies that both National City Bank and The PNC Financial Services Group, Inc. were properly served. She further testifies that she spoke with Attorney for PNC, Ms. Jennifer Wong, who acknowledged that while her office represented PNC in several cases, it was impossible for her or the client to identify whether they owned the particular note in the instant case without counsel being assigned. Ms. Weng testifies that thus far no counsel has been assigned to this case to represent the second lienholder and no proof of claim has been filed.

Ms. Weng has done her due diligence and has reviewed title, the recorder's office and Debtor's billing statements. She has also researched the FDIC website showing that PNC acquired National City Bank without government assistance and a copy of this information is filed as Exhibit A (Dckt. 75). Ms. Weng has also researched the Federal Research showing that PNC Bank is a "wholly-owned indirect subsidiary of the PNC Financial Services Group, Inc., and a copy of the research is attached as Exhibit B (Dckt. 75). While the title report Ms. Weng reviewed only lists National City Bank as the originating lender with no recorded assignments to PNC or any other entity, her research indicates that National City Bank merged with PNC Bank in 2009. Thus, she caused service to both via certified mail. She has not received any correspondence or heard from either National City Bank or PNC.

JULY 16, 2020 HEARING

At the July 16, 2020 hearing, **xxxxxxxxxx**

5. 20-90210-E-11 AF-6 | **JOHN YAP AND IRENE LOKE** **Arasto Farsad** | **MOTION TO VALUE COLLATERAL OF FIRST HORIZON HOME LOAN CORPORATION** **6-5-20 [79]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claims is denied without prejudice.

The Motion to Value filed by John Hst Yap and Irene Laiwah Loke ("Debtor") to seeks to value the following secured claims:

Claim Secured by a First Deed of Trust	First Horizon Home Loan Corporation Amount of Claim.....($341,860.00) [FN. 1]

FN. 1. The Motion clearly identifies First Horizon Home Loan Corporation as creditor with the claim secured by the First Deed of Trust. It also asserts that "Mr. Cooper" is the "mere" loan servicer, presumably for First Horizon Home Loan Corporation. The Motion further asserts that Mr. Cooper has filed a claim [which is not identified in the Motion].

Claim Secured by Second Deed of Trust	First Horizon Loan Corporation Amount of Claim (Est.).....($44,700.00)

The Motion is accompanied by Debtor's declaration. Declaration, Dckt. 40. Debtor is the owner of the subject real property commonly known as 1031 Deena Way, Fallon, Nevada ("Property"). Debtor seeks to value the Property at a fair market value of $261,900.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of Regina Zabarte, a licensed real estate appraiser with 20 years' experience, who opines that the value of the Property is $261,900.00. Declaration, Dckt. 83.

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

DISCUSSION

The Motion is unclear against whom the relief is requested. While identifying First Horizon as the holder of the claims secured by the First and Second Deeds of Trust, it states that Mr. Cooper is a "mere" loan servicer. But the Motion then morphs into requesting that the court value the secured claim of the "mere" loan servicer.

Exhibits are filed in support of the Motion, Dckt. 81, and the title page identifying the exhibits states:

> **Subject Property Address:** 1032 Deena Way,
> Fallon NV 89406 (APN: 001-453-19)
>
> **1ST DOT holder:** First Horizon Home Loan Corporation/Nationstar Mortgage LLC / Mr. Cooper
>
> **2nd DOT holder:** First Horizon Home Loan Corporation

(Emphasis in original.)

The sixty-one pages of exhibits includes copies of loan servicer statements and the appraisal report. Missing from the Exhibits is a copy of the "Mr. Cooper" proof of claim.

The prayer requests that the following relief be granted:

> 1. That the Property (1032 Deena Way, Fallon, NV 89406) be valued at $261,900.00 for purposes of the Debtors' Chapter 11 Plan;
>
> 2. That the 1st deed of trust with Mr. Cooper, be deemed as secured in the amount of $261,900.00 and $79,960.00 be deemed as a general unsecured claim for purposes of Debtors' Chapter 11 Plan;
>
> 3. That the 2nd deed of trust with First Horizon Home Loan Corporation be deemed wholly unsecured and be classified as a general unsecured claim for purposes of Debtors' Chapter 11 Plan; and
>
> 4. For such other and further relief as the Court deems proper.

Motion, p. 5:15-24.

This prayer is a bit curious in that it does not seek to have the court to value either of the claims, but only the "deeds of trust," and then have the "deeds of trust" classified as general unsecured claims. 11 U.S.C. § 506(a) provides for valuing claims, not merely security instruments (such as deeds of trust).

The court could read the use of the words "deed of trust" as a merely clerical error by a bankruptcy attorney not appreciating the distinction between a claim and a security document, and the different between a note evidencing an obligation and a security document. Such slips happen.

However, it appears that if the court were to grant the relief against "Mr. Cooper" as requested, the poor Debtor (and ultimately Debtor in Possession's counsel) would learn upon the completion of the plan that the actual creditor, not mere "Mr. Cooper" still had a claim for the full amount of the Note secured by the property.

Though Movant did not identify the proof of claim for the obligation secured by the First Deed of Trust and did not include a copy as an Exhibit, the court has been able to identify it as Proof of Claim No. 2-1.

Upon review of Proof of Claim 2-1 the following information is provided:

Identity of Current Creditor:

> THE BANK OF NEW YOUR MELLON f/k/a THE BANK OF NEW YOUR as Trustee for FIRST HORIZON ALTERNATIVE MORTGAGE SECURITIES TRUST 2005-AA8

(Emphasis in original.)

Where Notices and
Payments are to be Sent

> Nationstar Mortgage LLC d/b/a Mr. Cooper
> Attn: Bankruptcy Department.

Thus, Bank of New York Mellon, as Trustee is the creditor, not "Mr. Cooper."

As drafted, the court would be granting relief against someone who is not a creditor, leaving Bank of New York Mellon, as Trustee, with a secured claim in the full amount and upon completion of the plan the crushing full amount of the secured debt falling on the Debtor.

Reviewing the Certificate of Services, the pleadings were served on Mr. Cooper, First Horizon, and Met Life. Dckt. 84.

Proof of Claim No. 2-1 documenting that a real party in interest is absent from this Contested Matter, the Motion is denied without prejudice.

Additionally, though addressed in a prior Contested Matter with Movant and counsel, Movant has sought relief against two separate persons for two separate proofs of claim. While in an adversary proceeding Federal Rule of Civil Procedure 20, as incorporated into Federal Rule of Bankruptcy Procedure 7020) permits the joinder of multiple parties in one adversary proceeding if there is a common question of law or fact to all defendants, Federal Rule of Bankruptcy Procedure 7020 is not automatically incorporated into contested matter practice. Fed. R. Bankr. P. 9014(c).

Though the court, on a one-off basis, after the fact made Federal Rule of Civil Procedure 20 and Federal Rule of Bankruptcy Procedure 7020 applicable to an earlier motion filed by Movant, it has not done for this Motion, nor has Movant requested such relief.

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 Value Collateral and Secured Claims of Mr. Cooper and First Horizon Home Loan Corporation filed by John Yap and Irene Loke ("Debtors") 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 pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

6.	**16-90513-E-7** **SSA-3**	**TIRZAH HAMILTON** **Pro Se**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S)** **6-25-20 [47]**

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 (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 25, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Steven Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of August 17, 2016 through June 13, 2020. The order of the court approving employment of Applicant was entered on September 7, 2016. Dckt. 27. Applicant requests fees and costs inclusive of $27,477.90, reduced to the amount of $18,000.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include consulting with the Trustee and broker, litigating adversary proceedings, reviewing proofs of claim, case administration, appearing at status conferences, and preparation of legal documents. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis & Recovery: Applicant spent 1 hour in this category. Applicant reviewed Debtor's Schedules, court file, and court hearing, as well as communicated with Debtor's counsel regarding settlement agreements.

General Case Administration: Applicant spent 2.9 hours in this category. Applicant reviewed emails, attended hearings, communicated with the Trustee, reviewed motions, and prepared motions for the client.

Claims Administration & Objection: Applicant spent 5 hours in this category. Applicant reviewed the claims docket, exemptions, revisions, and Trustee's objections to exemptions. Applicant attended hearings and prepared a settlement agreement.

Fee/Employment Applications: Applicant spent 5.8 hours in this category. Applicant prepared applications to employ appraisers and brokers, and drafted orders and appointment documents.

Litigation: Applicant spent 66.20 hours in this category. Applicant handled administration of the adversary proceeding, including drafting complaints, communicating with opposing counsel, preparing discovery, relaying settlement offers, and drafting pleadings.

Meeting of Creditors: Applicant spent 0.7 hours in this category. Applicant prepared for and attended the Meeting of Creditors, and prepared for hearings relating to it.

Plan & Disclosure Statement: Applicant spent 2.6 hours in this category. Applicant prepared Trustee's Objections, communicated with Trustee and Debtor, and performed work relating to disbursement and closing activities.

Relief from Stay Proceeding: Applicant spent 3.5 hours in this category. Applicant prepared a motion and memorandum of points and authorities, performed case research, and reviewed the court's tentative decision.

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**
Steven Altman	87.7	$300.00	$26,310.00
Dawn Darwin	0	$90.00	$0.00
Total Fees for Period of Application			$26,310.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,167.90 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies & Postage	$1,167.90	$1,167.90
Total Costs Requested in Application		$1,167.90

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $18,000.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $18,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee as an administrative expense from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees and expenses $18,000.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Steven Altman, Professional employed by the Chapter 7 Trustee:

Fees and Expenses in the amount of $18,000.00,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% 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 7 case.

7. **19-91120-E-7** **TIMOTHY ERICKSON** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALANA ERICKSON**
WF-2 **Brian Haddix** **6-25-20 [18]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 25, 2020. By the court's calculation, 21 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.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Alana Erickson ("Settlor"). The claims and disputes to be resolved by the proposed settlement are an avoidable transfer under section 544 of the Bankruptcy Code and California Civil Code 3439 that occurred when Debtor transferred his interest in real property located at 32468 Via Destello, Temecula, California to his spouse, Alana Erickson for no consideration.

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 A in support of the Motion, Dckt. 21):

A. Settlor agrees to pay Trustee $60,000.00 on or before July 31, 2020 in the form of a check payable to Trustee and Escrow Holder shall disburse the amount directly to Trustee.

B. Settlor will not close escrow until the court approves this settlement and Escrow Holder is able to disburse monies to Trustee.

C. Trustee shall release Settlor from any and all claims arising from or related to the dispute upon receipt of the settlement amount, and Settlor shall provide a reciprocal release to Trustee and the estate.

D. The agreement is conditioned upon approval by the court.

E. The parties consent to the court having jurisdiction to settle disputes related to this 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).

Under the settlement, Movant shall recover $60,000.00 in satisfaction of the Estate's claim for recovery of the property. Movant asserts that the property can be recovered for the Estate pursuant to an avoidance of transfer. This proposed settlement allows Movant to recover for the Estate $60,000.00 without further cost or expense and is 87% of the maximum amount of the claim identified by Movant.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Trustee believes he would prevail in an action to avoid the transfer but would incur expense and time proving Debtor was insolvent at the time of the transfer.

Difficulties in Collection

Trustee does not address this factor.

Expense, Inconvenience, and Delay of Continued Litigation

Proving that Debtor was insolvent at the time of the transfer would likely require expert testimony and the outcome of the litigation would be uncertain. Furthermore, Trustee's recovery would be limited only to payment of creditors in full. The compromise achieves close to the same result to Trustee prevailing in litigation.

Paramount Interest of Creditors

The compromise would provide 87% of the maximum claim if Trustee prevailed without further time and expense. It would also allow Trustee to close the case and pay creditors much sooner than if the Trustee were to litigate.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the recovery for the Estate would be close to the amount recoverable should Trustee prevail in the litigation, and the compromise provides 87% of the claim without further time and expense. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Alana Erickson ("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 A in support of the Motion (Dckt. 21).

8. 20-90221-E-7 GRF-1 | **DEAN/KRISTIN MOSER** Brian Haddix | **MOTION FOR COMPENSATION FOR GARY R. FARRAR, CHAPTER 7 TRUSTEE(S)** **6-23-20 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gary Farrar, the Chapter 7 Trustee, ("Applicant") for the Estate of Dean and Kristin Moser ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period March 23, 2020, through July 16, 2020.

APPLICABLE LAW

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the 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)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

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 general case administration accounting, and asset analysis and recovery. 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.

General Case Administration: Applicant spent 2.3 hours in this category. Applicant reviewed real estate and vehicles, made document requests, advised Debtor to seek bankruptcy counsel, corresponded with Debtor's attorney, and prepared the fee application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.0 hours in this category. Applicant requested valuation of real property and processed the 521S ID.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gary Farrar	3.3	$300.00	$990.00
	0	$0.00	$0.00
Total Fees for Period of Application			$990.00

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 and Final Fees in the amount of $990.00 are approved 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.

The Chapter 7 Trustee performed general case administration accounting, and asset analysis and recovery. Pursuant to a Liquidation Analysis, Applicant's efforts would have potentially resulted in a realized gross of $18,700.00 recovered for the estate though a motion has been filed to convert the case to chapter 13. Dckt. 24. *See* Dckt. 17.

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

Fees $990.00

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 Gary Farrar, 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 Gary Farrar is allowed the following fees and expenses as trustee of the Estate:

Gary Farrar, the Chapter 7 Trustee

Fees in the amount of $990.00,

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.

9. 19-90122-E-11 MF-4 | **MIKE TAMANA FREIGHT LINES, LLC** | **CONTINUED MOTION TO USE CASH COLLATERAL**
Daniel Vaknin | **2-12-19 [21]**

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, 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.

The Motion for Authority to Use Cash Collateral is granted.

Debtor in Possession Mike Tamana Freight Lines, LLC filed the initial First Day Motion to use cash collateral to pay necessary expenses for the estate to continue to operate the transportation business that is included in the estate. The Debtor in Possession is continuing to operate on interim post-petition financing terms.

The Expenses to be paid with cash collateral are set forth in Exhibit C (Dckt. 23) filed in support of this Motion.

The court has conducted a series of prior hearings, issuing prior orders and making findings thereon. A review of the prior hearing is set forth in the Civil Minutes from the January 23, 2020 prior hearing. Dckt. 435.

EIGHTH SET OF SUPPLEMENTAL PLEADINGS FOR JULY 16,2020 HEARING

On July 2, 2020 Debtor in Possession filed its Eighth Set of Supplemental Exhibits and Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckts. 528, 529.

The Debtor in Possession projected the following financial consequences of operating under the cash collateral budget for the 13 week period starting August 10, 2020:

Total Revenue.....$5,850,000
Total Expenses.....($5,829.409)

Net Operating Income For the 13 Week Period.....$20,510.00

Exhibit J, Dckt. 529.

Week Starting On:	10-Aug-2020	17-Aug-2020	24-Aug-2020	31-Aug-2020	07-Sep-2020	14-Sep-2020	21-Sep-2020	28-Sep-2020
Income								
Revenue	$450,000	$450,000	$450,000	$450,000	$450,000	$450,000	$450,000	$450,000
Brokerage Revenue	$0	$0	$0	$0	$0	$0	$0	$0
Total Income	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$450,000*
Expenses								
Payroll - Paylocity (incl. driver payroll, office payroll, office pay roll taxes, driver, officer salary)	$135,000	$135,000	$135,000	$135,000	$135,000	$135,000	$135,000	$135,000
Benefits	$0	$0	$0	$20,000	$0	$0	$0	$20,000
Workers Comp	$0	$0	$0	$40,000	$0	$0	$0	$40,000
Diesel/DEF/Reefer	$78,000	$78,000	$78,000	$78,000	$78,000	$78,000	$78,000	$78,000
Carrier Pay	$40,000	$40,000	$40,000	$40,000	$40,000	$40,000	$40,000	$40,000
Insurance	$0	$0	$0	$85,000	$0	$0	$0	$85,000
Stonemark Insurance	$0	$0	$0	$13,500	$0	$0	$0	$13,500
Car	$0	$0	$0	$0	$0	$0	$0	$0
Ceres Yard	$0	$0	$6,800	$0	$0	$0	$6,800	$0
Houston Yard	$0	$0	$0	$0	$0	$0	$0	$0
Unloading/ Lumpers	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000
Scales	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Truck and Trailer Washing	$1,200	$1,200	$1,200	$1,200	$1,200	$1,200	$1,200	$1,200
Tolls	$500	$500	$500	$500	$500	$500	$500	$500
Gps/Elogs/Trailer Temp	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Transflo	$400	$400	$400	$400	$400	$400	$400	$400
Recruiting	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Maintenance	$14,500	$14,500	$14,500	$14,500	$14,500	$14,500	$14,500	$14,500
Safety	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Oregon Tax/NM Tax	$0	$0	$0	$27,000	$0	$0	$0	$27,000
IT Expense/Software	$0	$0	$9,000	$0	$0	$0	$0	$9,000
Miscellaneous	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
Utilities	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500	$1,500
Carrier Cure Payments from Assumption**	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000
Other Expenses	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500	$2,500
Equip. Adq. Protection Pmts								
Allegiance Fin. Group	$6,321	$24,092	$0	$0	$0	$30,414	$0	$0
Banc of America	$0	$0	$0	$0	$17,061	$0	$0	$0
BB&T Commercial Equip.	$0	$0	$0	$26,048	$0	$0	$0	$26,048
First Midwest	$0	$0	$0	$6,128	$0	$0	$0	$6,128
Hitachi	$0	$0	$0	$0	$0	$0	$0	$0
Lee Financial	$59,828	$0	$31,641	$0	$59,828	$0	$31,641	$0
People's Capital	$12,391	$0	$28,663	$0	$0	$12,391	$0	$28,663
Signature Financial	$0	$0	$0	$0	$14,219	$0	$0	$0
TAB Bank	$0	$8,034	$0	$0	$0	$0	$8,034	$0
TCF Equipment Fin.	$0	$0	$0	$12,790	$0	$0	$0	$12,790
Volvo	$0	$0	$12,964	$12,873	$0	$0	$0	$25,837
Wells Fargo Equip. Fin.	$3,686	$0	$20,143	$16,379	$16,476	$0	$12,970	$23,552
Daimler Financial	$0	$31,641	$0	$0	$0	$31,641	$0	$0
Equip. Adq. Protection Cure Pmts								
Wells Fargo Equip. Fin.	$0	$0	$0	$0	$0	$0	$0	$0
People's Capital	$0	$0	$0	$0	$0	$0	$0	$0
Daimler Financial	$0	$0	$0	$0	$0	$0	$0	$0
TCF Equipment Fin.	$0	$0	$0	$0	$0	$0	$0	$0
Other Expenses								
Heavy Duty Tax	$0	$0	$0	$0	$0	$0	$0	$0
Registration	$0	$0	$0	$0	$0	$0	$0	$170,000
Crestmark DIP Fees	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000
US Trustee Fees	$0	$0	$0	$0	$0	$0	$0	$0
Total Expenses	*$385,327*	*$366,868*	*$412,311*	*$562,819*	*$410,684*	*$377,546*	*$362,545*	*$790,619*
Net Income/(Loss)	***$64,673***	***$83,133***	***$37,689***	***-$112,819***	***$39,316***	***$72,454***	***$87,455***	***-$340,619***
Cumulative Free Cash	$64,673	$147,806	$185,495	$72,676	$111,992	$184,446	$271,901	-$68,718

**The DIP will file a motion to assume carrier-executory contracts, and thus, this row reflects amounts for cure payments.

Week Starting On:	05-Oct-2020	12-Oct-2020	19-Oct-2020	26-Oct-2020	02-Nov-2020	Total
Income						
Revenue	$450,000	$450,000	$450,000	$450,000	$450,000	$5,850,000
Brokerage Revenue	$0	$0	$0	$0	$0	$0
Total Income	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$450,000*	*$5,850,000*
Expenses						
Payroll - Paylocity (incl. driver payroll, office payroll, office pay roll taxes, driver, officer salary)	$135,000	$135,000	$135,000	$135,000	$135,000	$1,755,000
Benefits	$0	$0	$0	$0	$20,000	$60,000
Workers Comp	$0	$0	$0	$0	$40,000	$120,000
Diesel/DEF/Reefer	$78,000	$78,000	$78,000	$78,000	$78,000	$1,014,000
Carrier Pay	$40,000	$40,000	$40,000	$40,000	$40,000	$520,000
Insurance	$0	$0	$0	$0	$85,000	$255,000
Stonemark Insurance	$0	$0	$0	$0	$13,500	$40,500
Car	$0	$0	$0	$0	$0	$0
Ceres Yard	$0	$0	$0	$6,800	$0	$20,400
Houston Yard	$0	$0	$0	$0	$0	$0
Unloading/ Lumpers	$15,000	$15,000	$15,000	$15,000	$15,000	$195,000
Scales	$1,000	$1,000	$1,000	$1,000	$1,000	$13,000
Truck and Trailer Washing	$1,200	$1,200	$1,200	$1,200	$1,200	$15,600
Tolls	$500	$500	$500	$500	$500	$6,500
Gps/Elogs/Trailer Temp	$1,500	$1,500	$1,500	$1,500	$1,500	$19,500
Transflo	$400	$400	$400	$400	$400	$5,200
Recruiting	$1,500	$1,500	$1,500	$1,500	$1,500	$19,500
Maintenance	$14,500	$14,500	$14,500	$14,500	$14,500	$188,500
Safety	$1,000	$1,000	$1,000	$1,000	$1,000	$13,000
Oregon Tax/NM Tax	$0	$0	$0	$27,000	$0	$81,000
IT Expense/Software	$0	$0	$0	$9,000	$0	$27,000
Miscellaneous	$2,500	$2,500	$2,500	$2,500	$2,500	$32,500
Utilities	$1,500	$1,500	$1,500	$1,500	$1,500	$19,500
Carrier Cure Payments from Assumption**	$2,000	$2,000	$2,000	$2,000	$2,000	$26,000
Other Expenses	$2,500	$2,500	$2,500	$2,500	$2,500	$32,500
Equip. Adq. Protection Pmts						
Allegiance Fin. Group	$0	$6,321	$24,092	$0	$0	$91,241
Banc of America	$17,061	$0	$0	$0	$17,061	$51,182
BB&T Commercial Equip.	$0	$0	$0	$0	$26,048	$78,145
First Midwest	$0	$0	$0	$0	$6,128	$18,385
Hitachi	$0	$0	$0	$0	$0	$0
Lee Financial	$59,828	$0	$31,641	$0	$0	$274,409
People's Capital	$0	$12,391	$0	$28,663	$0	$123,162
Signature Financial	$14,219	$0	$0	$0	$14,219	$42,656
TAB Bank	$0	$0	$8,034	$0	$0	$24,102
TCF Equipment Fin.	$0	$0	$0	$0	$12,790	$38,370
Volvo	$0	$0	$0	$12,964	$12,873	$77,511
Wells Fargo Equip. Fin.	$12,790	$3,686	$10,448	$9,695	$16,379	$146,204
Daimler Financial	$0	$0	$31,641	$0	$0	$94,924
Equip. Adq. Protection Cure Pmts						
Wells Fargo Equip. Fin.	$0	$0	$0	$0	$0	$0
People's Capital	$0	$0	$0	$0	$0	$0
Daimler Financial	$0	$0	$0	$0	$0	$0
TCF Equipment Fin.	$0	$0	$0	$0	$0	$0
Other Expenses						
Heavy Duty Tax	$0	$0	$0	$0	$0	$0
Registration	$0	$0	$0	$0	$0	$170,000
Crestmark DIP Fees	$5,000	$5,000	$5,000	$5,000	$5,000	$65,000
US Trustee Fees	$0	$0	$0	$55,000	$0	$55,000
Total Expenses	*$406,997*	*$325,499*	*$408,957*	*$452,221*	*$567,098*	*$5,829,490*
Net Income/(Loss)	***$43,003***	***$124,501***	***$41,043***	***-$2,221***	***-$117,098***	***$20,510***
Cumulative Free Cash	-$25,715	$98,786	$139,830	$137,608	$20,510	

**The DIP will file a motion to assume carrier-executory contracts, and thus, this row reflects amounts for cure payments.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for expenses necessary for the estate to continue to operate the transportation business that is included in the estate. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period August 10, 2020 through November 2, 2020. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to xx:xx x.m. on Xxxx xx, 2020, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement shall be filed and served on or before Xxxxx xx, 2020, with any opposition to be presented orally at the continued hearing.

At the hearing, xxxxxxxxxx.

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 Use of Cash Collateral filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the use cash collateral as set forth in the budget filed as Exhibit J (Dckt. 529) is authorized for the period August 10, 2020 through November 2, 2020.

IT IS FURTHER ORDERED that hearing on the Motion to Use Cash Collateral is continued to Xxxx xx, 2020, at 10:30 a.m. Supplemental pleadings requesting further use of cash collateral shall be filed and served on or before **Xxxx xx, 2020,** with any opposition to be presented orally at the continued hearing.

10. 19-91122-E-7 MARIBEL SOTO RIVERA MOTION TO COMPEL
BLF-3 Pro Se 6-3-20 [59]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"). Movant requests the Debtor immediately turn over the Property to Movant and vacate the Property within five (5) days of the entry of the order.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Maribel Soto Rivera ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While a review of the Docket shows Debtor claimed the Property as exempt in her Schedule C as "100% of fair market value," (Dckt. 20), the court entered an order on April 6, 2020 sustaining Trustee's objection due to Debtor failing to specify the code section for the exemption and alternatively, if the exemption is claimed under Section 703.140(b)(5) of the California Code of Civil Procedures, Debtor would exceed the permitted exemption amount (Dckt. 48). Since then, Debtor has "hindered and delayed" Trustee's efforts by failing to cooperate with the Trustee and his realtor to list and market the Property. Motion, Dckt. 59.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 Turnover of Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Turnover of Property is granted.
>
> **IT IS FURTHER ORDERED** that Maribel Soto Rivera ("Debtor"), and each of them, shall deliver on or before noon on **xxxx, 2020**, possession of the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

11. 20-90373-E-7 CLH-1 | **THOMAS SWARTZ, Pro Se** | **MOTION TO PREVENT DISMISSAL AND SHOW CAUSE WHY THIS CASE SHOULD NOT BE DISMISSED IF DEBTOR'S MISSING SCHEDULES, STATEMENT OF FINANCIAL AFFAIRS, AND OTHER DOCUMENTS ARE NOT TIMELY FILED**
6-8-20 [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 Chapter 7 Trustee and Office of the United States Trustee on June 8, 2020. By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

The Motion to Prevent Dismissal and Show Cause 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 Prevent Dismissal and Show Cause is xxxxxxx.

Jane M. Wright, Ron R. Skrbina, Christina A. Trippp, and Gaylord W. Skrbina, ("Judgment Creditors"), seeks to prevent the dismissal of the case and show cause as to why the case should not be dismissed if Debtor's missing Schedules, Statement of Financial Affairs, and other documents not timely filed by June 11, 2020 on the grounds that Judgement Creditors believe this is an asset case that will generate meaningful proceeds for the benefit of this estate and its creditors.

DISCUSSION

Debtor has failed to file the following required bankruptcy documents:

A. Schedule(s): A–J,

B. Statement of Financial Affairs,
C. Summary of Assets and Liabilities, and
D. Voluntary Petition
E. Form122A-1 Statement of Monthly Income

Debtor's failure to submit the required documents is unreasonable delay that is prejudicial to creditors and cause for dismissal. 11 U.S.C. § 707(c)(1).

A Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents are not Timely Filed ("NOID") was filed May 28, 2020. Dckt. 3.

First, Judgment Creditors seek to "satisfy the procedure set forth" in the Notice of Intent to Dismiss for failure to timely file bankruptcy documents that a notice of hearing on the NOID, statement of the issue, and evidence, be filed and set for hearing on July 9, 2020, at 10:30 a.m.

Judgment Creditors seek an order preventing the dismissal of the case arguing that there is cause to prevent such dismissal on the basis that Movant has determined that this is an asset case that will generate proceeds that will benefit the estate and its creditors. Judgment Creditors' counsel testifies that he researched Debtor's assets and has confirmed Debtor's interest in at least two partnerships. Declaration, ¶¶ 4-6.

Moreover, Judgment Creditors further assert that they have retained professionals and have spent considerable time in this case that should not be defeated by Debtor's actions or lack of action in prosecuting this case. Judgment Creditors contend that they have no doubt that a complete administration of this case is the only appropriate course of action.

DECISION

In this case, Judgment Creditors argue that there are assets of the estate to be administered. The Debtor, having chosen to file bankruptcy, has obligations and duties that must be performed. Such performance can be the subject of this court's corrective sanction power (monetary and non-monetary) and the corrective and punitive sanction power of the Article III judges of the District Court.

On June 9, 2020, Debtor filed Schedule(s): A–J and Form122A-1 Statement of Monthly Income. Dckts. 19, 20. Debtor also filed his Certificate of Credit Counseling on June 15, 2020, and a Personal Financial Management Course on June 23, 2020. Dckts. 22, 25.

The rest of missing bankruptcy documents have not yet filed. Moreover, Debtor has failed to file the correct Voluntary Petition form. Debtor filed 101 form effective April 2013 that has been superseded since December 2015.

The Chapter 7 Trustee did not file a response to the Motion. At the hearing, **xxxxxxxxxx**

Adversary Proceeding

On Schedule A/B Debtor states that he has no interests in any corporations, partnerships, limited liability companies, or other businesses. Schedules A/B, Question 19; Dckt. 19 at 5. However, in response to Question 35 of Schedule A/B asking what other assets the Debtor may have, he responded having claims worth $10,000,000. *Id*. at 8. He references an attached adversary cover sheet, but none is attached to the Schedules.

A review of the court's file discloses that on June 9, 2020, Debtor filed a pleading titled "Counter Complaint" against "Cross Defendants" [an undefined term], who are identified in the caption as "Rossetti et al." Adversary Proceeding 20-09006; Dckt. 1. The Counter Complaint discusses a 2001 Chapter 11 bankruptcy case filed by Debtor, the Chapter 11 plan not being confirmed, threats of double jeopardy, facts being hidden from the court in connection with the Chapter 11 case, and negligence of an attorney. Debtor then requests a judgment for declaratory relief, indemnification, and to be held harmless, as well as costs of suit.

It appears that the complaint in the Adversary Proceeding is a Counter Complaint from some other action. All of the events in the Counter Complaint appear to be well pre-petition and this is the claim that is stated to be property of the bankruptcy estate on Schedule A/B.

The Chapter 7 Trustee addressed these claims and the Debtor having commenced an adversary proceeding with respect to this property of the bankruptcy estate. **XXXXXXXXXX**

12. 19-90751-E-7 KAMALDIP DHAMI MOTION TO SELL
BLF-6 Harry Gill 5-26-20 [152]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 26, 2020. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property: a promissory note on an as-is basis ("Property").

The complete terms of the sale can be found in the Purchase and Sale Agreement: Exhibit B, Dckt. 156. The proposed purchaser of the Property is Jasdeep S. Grewal, and the terms of the sale are summarized as follows:

A. Buyer shall pay Trustee $5,000.00 for the promissory note which will be due at the time of signing the agreement.

B. The sale is conditional on the approval of the court.

C. Buyer shall pay all transfer fees and costs that may be incurred in connection to the sale.

D. Buyer shall take the promissory note "as-is" from Seller.

E. Buyer shall release seller from any and all claims related to or arising under the sale.

F. Seller shall not be responsible for any taxes arising under or related to the sale.

G. The bankruptcy court shall have exclusive jurisdiction over any disputes relating to or arising from the agreement.

Proposed Overbidding Procedures

The Chapter 7 Trustee has proposed the following overbidding procedures:

1. Any overbidder must agree to the terms of the Purchase and Sale Agreement. *See* Exhibit B., Dckt. 156.

2. The first overbid must be at least in the amount of $5,500.00 and successive overbids must be made in at least $500.00 increments.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because in the alternative to the sale, Chapter 7 Trustee would require the assistance of special counsel in order to collect on the promissory note which would add additional time and expense to the administration of the Estate. Trustee believes a favorable outcome in the litigation would be unlikely.

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

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

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

IT IS ORDERED that Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jasdeep S. Grewal ("Buyer"), the promissory note ("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 B, Dckt. 156, and as further provided in this Order.

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

13. 19-90751-E-7 JC-1 | **KAMALDIP DHAMI** **Harry Gill** | **MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER** **5-7-20 [137]**

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 76 days' notice was provided. 14 days' notice is required.

The Motion to Quash and for Protective Order was not 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 Quash and for Protective Order is denied.

The present Motion to Quash and for Protective Order has been filed by Kirksville Hospitality, Inc. ("Movant"). The claims are asserted against Wilmington Trust National Association ("Respondent"). Respondent's Subpoena requested Wells Fargo provide the following documents:

1. Bank Statements since January 1, 2014 for all accounts in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

2. Bank statements since January 1, 2014 for all accounts in the name of Kirksville.

3. Copies of checks greater than $10,000.00 made payable to Debtor or deposited into any account in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

4. Copies of wires greater than $10,000.00 deposited into any account the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

5. Copies of checks greater than $10,000.00 payable to Kirksville or deposited into any account in the name of Kirksville since January 1, 2014.

6. Copies of wires greater than $10,000.00 deposited into any account in the name of Kirksville since January 1, 2014.

REVIEW OF MOTION

In asserting this claim pursuant to Federal Rules of Civil Procedure Rules 45(c)(3) and 26, Movant states the following grounds for relief:

A. Plaintiff seeks information that is irrelevant to the present action and "involves intrusion into the private financial rights of Movant and its shareholder, directors, and officers that are not parties to the above litigation." Mtn. Dckt. 137, p. 4.

B. Plaintiff seeks evidence that is overly broad and "not reasonably calculated to lead to the discovery of admissible evidence." *Id.*, p. 5

C. If the discovery is not quashed, Movant seeks a protective order to limit the scope of discovery to items Plaintiff can prove are relevant to the current matter.

Movant did not provided a Declaration in support of the Motion.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 2, 2020. Dckt. 168. Respondent filed the Declaration of Glen R. Segal in support of Creditor's Opposition on July 2, 2020, Dckt. 169. Respondent opposes the Motion on the following grounds:

A. Creditor's subpoena is not improper because it only seeks documents that supplement what has already been requested in the previous Rule 2004 Subpoena to Wells Fargo.

B. Movant's description of what Creditor subpoenaed from Wells Fargo is incorrect.

C. According to the Subpoena, the documents were to be delivered by May 8, 2020. Wells Fargo produced the documents on May 7, 2020 therefore making the Motion moot.

D. Movant incorrectly filed this Motion under the bankruptcy case instead of under the adversary proceeding.

E. Movant fails to propose any language for a protective order.

F. Movant's Motion does not comply with LBR 9014(d)(3)(D) in that it does not provide "any evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Furthermore, Movant has not filed any declarations that comply with FRCP 56(c)(4) or any documents in support of the Motion.

G. Movant's Notice of Hearing does not comply with LBR 9014-1(d)(3)(B) by not advising respondents:

"(i) whether and when written opposition must be filed, the deadline for filing and serving it and the names and addresses of the persons who must be served with any opposition; (ii) that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition; and (iii) that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling or can view any pre-disposition hearing by checking the Court's website."

APPLICABLE LAW

Rule 45(d) of the Federal Rules of Civil Procedure provides in part for the protection of a person subject to a subpoena, specifically–

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

[. . .]

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information[.]

Fed. R. Civ. P. 45.

Rule 26(c) provides in part of protective orders–

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

[. . .]

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

[. . .]

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and . . .

Fed. R. Civ. P. 26.

DISCUSSION

General Housekeeping

Notice as a Motion Under LBR 9014–1(f)(1) or (f)(2) is Unclear

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 to requesting the court for an order to quash Plaintiff's subpoena to produce documents, and the hearing will be 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).

Notice Fails to Meet the Requirements of Local Rules as to Contents

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Movant failed to include statement about viewability of tentative rulings on court website. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DECISION

Movant's "counsel" filed a Motion making several factual assertions. However, no declaration of the agent or representative for Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding– the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

As explained by the Respondent, discovery is proper relating to necessary and proper documents and information in this adversary proceeding relating to the actions and conduct of the Defendant-Debtor. The allegations in the Complaint include:

> 6. In his Schedules filed on August 19, 2019, Debtor made a number of assertions under oath which were not true, including, but not limited to, the following:
> . . .
> c. Debtor stated that within four years before filing bankruptcy, Debtor (i) only owned or had in interest or (ii) was a member or an officer or director of Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC; however, Plaintiff is informed and believes, and thereon alleges, that Debtor also owned or had an interest in or was a member or an officer or director of Gold Management, Inc.; Kamhar Gold LLC; H S Gold Mine, LLC; K & K Gold LLC; and Dhami Investments LLC, among other entities;
>
> d. Debtor stated that he did not hold and negotiable or non-negotiable instruments; however, Plaintiff is informed and believes, and thereon alleges, that Debtor failed to disclose that he was the holder of three promissory notes totaling more than $350,000; . . . .

19-9021; Complaint, Dckt. 1.

The Response, Supporting Declaration, and Exhibits filed by Respondent, Dckts. 168, 169, 170, provide further detailed explanation as to the relevance, need, and appropriateness for the discovery. These include Debtor being the 100% shareholder of Kirksville and that such documents where previously obtained via a Rule 2004 Examination.

There is no burden or intrusion on the Movant. Rather, it is just financial information, which is focused on the Defendant-Debtor's actions to transfer monies to himself. Merely because Movant would prefer that information concerning the Debtor-Defendant not be disclosed is not the basis for barring proper discovery.

Unlicensed Practice of Law

The present Motion is on the letterhead of Jerome A Clay, Cal. Bar. No. 327175. Dckt. 137. However, Mr. Clay does not sign the Motion. It is signed by "Harjot Dhami," who is identified as the president of Kirksville Hospitality, Inc.

As every licensed attorney knows, corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in *pro se* or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The use of the attorney's pleading and Harjot Dhami signing the Motion results in Harjot Dhami engaging in the unlicensed practice of law and being aided and abetted in such by attorney Jerome A. Clay. A check of the State Bar of California website member information discloses that no person with the name Harjot Dhami is licensed as an attorney in California. [FN. 1] The State Bar website identifies Jerome A. Clay as a licensed attorney since November 21, 2019. [FN. 2] The court says "aided and abetted" in light of the Clerk's Office identifying this Motion as having been filed electronically by Jerome Clay using his unique electronic filing user ID and password.

FN.1.
http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?FreeText=Harjot+Dhami&SoundsLike=false

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/327175

The Court by separate orders to show cause will address the unlicensed practice of law, the improper use of the electronic filing user ID and password by a licensed attorney to file pleadings for another person, and the aiding and abetting Harjot Dhami in the unlicensed practice of law in this federal court, which in addition to the corrective sanctions of this court, shall include the referral of these matters to the Chief Judge of the District Court for the consideration of punitive sanctions and consideration of counsel's admission to practice in the Eastern District of California.

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 Quash and for Protective Order by Kirksville Hospitality, Inc., ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

14. 19-90751-E-7 JC-2 | **KAMALDIP DHAMI** Harry Gill | **MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER** 5-7-20 [140]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 76 days' notice was provided. 14 days' notice is required.

The Motion to Quash and for Protective Order was not 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. Opposition has been filed.

The Motion to Quash and for Protective Order is denied.

The present Motion to Quash and for Protective Order has been filed by Kirksville Hospitality, Inc. ("Movant"). The claims are asserted against Wilmington Trust National Association ("Respondent"). Respondent's Subpoena requested U.S. Bank National Association provide the following documents:

1. Bank Statements since January 1, 2014 for all accounts in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

2. Bank statements since January 1, 2014 for all accounts in the name of Kirksville.

3. Copies of checks greater than $10,000.00 made payable to Debtor or deposited into any account in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

4. Copies of wires greater than $10,000.00 deposited into any account the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

5. Copies of checks greater than $10,000.00 payable to Kirksville or deposited into any account in the name of Kirksville since January 1, 2014.

6. Copies of wires greater than $10,000.00 deposited into any account in the name of Kirksville since January 1, 2014.

REVIEW OF MOTION

In asserting this claim pursuant to Federal Rules of Civil Procedure Rules 45(c)(3) and 26, Movant states the following grounds for relief:

A. Plaintiff seeks information that is irrelevant to the present action and "involves intrusion into the private financial rights of Movant and its shareholder, directors, and officers that are not parties to the above litigation."

B. Plaintiff seeks evidence that is overly broad and "not reasonably calculated to lead to the discovery of admissible evidence."

C. If the discovery is not quashed, Movant seeks a protective order to limit the scope of discovery to items Plaintiff can prove are relevant to the current matter.

Movant did not provide a Declaration in support of the Motion.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 2, 2020. Dckt. 172. Respondent filed the Declaration of Glen R. Segal in support of Creditor's Opposition on July 2, 2020, Dckt. 173. Respondent opposes the Motion on the following grounds:

A. Debtor failed to disclose in his schedules he held an interest in Gold Management, Inc. which is listed at the same address as Debtor's residence. Debtor further served as Secretary, President, a member of the board of directors, and the original registered agent for Gold Management, Inc. Debtor seems to have ownership interests in Movant and Gold Management, Inc.

B. Movant's counsel is also Debtor's counsel.

C. According to the Subpoena, the documents were to be delivered by May 8, 2020. US Bank sent several disks containing the requested documents to

Respondent via overnight mail on May 7, 2020 which were received the next day therefore making the Motion moot.

D. Movant incorrectly filed this Motion under the bankruptcy case instead of under the adversary proceeding.

E. Movant fails to propose any language for a protective order.

F. Movant's Motion does not comply with LBR 9014(d)(3)(D) in that it does not provide "any evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Furthermore, Movant has not filed any declarations that comply with FRCP 56(c)(4) or any documents in support of the Motion.

G. Movant's Notice of Hearing does not comply with LBR 9014-1(d)(3)(B) by not advising respondents

"(i) whether and when written opposition must be filed, the deadline for filing and serving it and the names and addresses of the persons who must be served with any opposition; (ii) that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition; and (iii) that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling or can view any pre-disposition hearing by checking the Court's website."

APPLICABLE LAW

Rule 45(d) of the Federal Rules of Civil Procedure provides in part for the protection of a person subject to a subpoena, specifically–

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

[. . .]

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information[.]

Fed. R. Civ. P. 45.

> Rule 26(c) provides in part of protective orders–
>
> (1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> (A) forbidding the disclosure or discovery;
>
> (A) forbidding the disclosure or discovery;
>
> [. . .]
>
> (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
>
> [. . .]
>
> (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and . . .

Fed. R. Civ. P. 26.

DISCUSSION

General Housekeeping

Notice as a Motion Under LBR 9014–1(f)(1) or (f)(2) Is Unclear

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 to requesting the court for an order to quash Plaintiff's subpoena to produce documents, and the hearing will be 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).

Notice Fails to Meet the Requirements of Local Rules as to Contents

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Movant failed to include statement about viewability of tentative rulings on

court website. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DECISION

Movant's "counsel" filed a Motion making several factual assertions. However, no declaration of the agent or representative for Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

As explained by the Respondent, discovery is proper relating to necessary and proper documents and information in this adversary proceeding relating to the actions and conduct of the Defendant-Debtor. The allegations in the Complaint include:

> 6. In his Schedules filed on August 19, 2019, Debtor made a number of assertions under oath which were not true, including, but not limited to, the following:
> . . .
> c. Debtor stated that within four years before filing bankruptcy, Debtor (i) only owned or had in interest or (ii) was a member or an officer or director of Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC; however, Plaintiff is informed and believes, and thereon alleges, that Debtor also owned or had an interest in or was a member or an officer or director of Gold Management, Inc.; Kamhar Gold LLC; H S Gold Mine, LLC; K & K Gold LLC; and Dhami Investments LLC, among other entities;
>
> d. Debtor stated that he did not hold and negotiable or non-negotiable instruments; however, Plaintiff is informed and believes, and thereon alleges, that Debtor failed to disclose that he was the holder of three promissory notes totaling more than $350,000; . . . .

19-9021; Complaint, Dckt. 1.

The Response, Supporting Declaration, and Exhibits filed by Respondent, Dckts. 172, 173, 174, provide further detailed explanation as to the relevance, need and appropriateness for the discovery. These include Debtor being the 100% shareholder of Kirksville and that such documents where previously obtained via a Rule 2004 Examination.

There is no burden or intrusion on the Movant. Rather, it is just financial information, which is focused on the Defendant-Debtor's actions to transfer monies to himself. Merely because Movant would prefer that information concerning the Debtor-Defendant not be disclosed is not the basis for barring proper discovery.

Unlicensed Practice of Law

The present Motion is on the letterhead of Jerome A Clay, Cal. Bar. No. 327175. Dckt. 137. However, Mr. Clay does not sign the Motion, but it is signed by "Harjot Dhami," who is identified as the president of Kirksville Hospitality, Inc.

As every licensed attorney knows, corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The use of the attorney's pleading and Harjot Dhami signing the Motion results in Harjot Dhami engaging in the unlicensed practice of law and being aided and abetted in such by attorney Jerome A. Clay. A check of the State Bar of California website member information discloses that no person with the name Harjot Dhami is licensed as an attorney in California. [FN. 1] The State Bar website identifies Jerome A. Clay as a licensed attorney since November 21, 2019. [FN. 2] The court says "aided and abetted" in light of the Clerk's Office identifying this Motion as having been filed electronically by Jerome Clay using his unique electronic filing user ID and password.

FN. 1.
http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?FreeText=Harjot+Dhami&SoundsLike=false

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/327175

The Court by separate orders to show cause will address the unlicensed practice of law, the improper use of the electronic filing user ID and password by a licensed attorney to file pleadings for another person, and the aiding and abetting Harjot Dhami in the unlicensed practice of law in this federal court, which in addition to the corrective sanctions of this court, shall include the referral of these matters to the Chief Judge of the District Court for the consideration of punitive sanctions and consideration of counsel's admission to practice in the Eastern District of California.

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 Quash and for Protective Order by Kirksville Hospitality, Inc. , ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

15. 19-90751-E-7 KAMALDIP DHAMI
JC-3 Harry Gill

MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER
5-7-20 [143]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 76 days' notice was provided. 14 days' notice is required.

The Motion to Quash and for Protective Order was not 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. An opposition was filed.

The Motion to Quash and for Protective Order is denied.

The present Motion to Quash and for Protective Order has been filed by Kirksville Hotel Management, LLC. ("Movant"). The claims are asserted against Wilmington Trust National Association ("Respondent"). Respondent's Subpoena requested U.S. Bank National Association provide the following documents:

1. Bank Statements since January 1, 2014 for all accounts in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

2. Bank statements since January 1, 2014 for all accounts in the name of Kirksville.

3. Copies of checks greater than $10,000.00 made payable to Debtor or deposited into any account in the name of Debtor or that Debtor had control

or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

4. Copies of wires greater than $10,000.00 deposited into any account the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

5. Copies of checks greater than $10,000.00 payable to Kirksville or deposited into any account in the name of Kirksville since January 1, 2014.

6. Copies of wires greater than $10,000.00 deposited into any account in the name of Kirksville since January 1, 2014.

REVIEW OF MOTION

In asserting this claim pursuant to Federal Rules of Civil Procedure Rules 45(c)(3) and 26, Movant states the following grounds for relief:

A. Plaintiff seeks information that is irrelevant to the present action and "involves intrusion into the private financial rights of Movant and its shareholder, directors, and officers that are not parties to the above litigation."

B. Plaintiff seeks evidence that is overly broad and "not reasonably calculated to lead to the discovery of admissible evidence."

C. If the discovery is not quashed, Movant seeks a protective order to limit the scope of discovery to items Plaintiff can prove are relevant to the current matter.

Movant did not provide a Declaration in support of the Motion.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 2, 2020. Dckt. 164. Respondent filed the Declaration of Glen R. Segal in support of Creditor's Opposition on July 2, 2020, Dckt. 165. Respondent opposes the Motion on the following grounds:

A. Debtor failed to disclose in his schedules he held an interest in Gold Management, Inc. which is listed at the same address as Debtor's residence. Debtor further served as Secretary, President, a member of the board of directors, and the original registered agent for Gold Management, Inc. Debtor seems to have ownership interests in Movant and Gold Management, Inc.

B. Movant's counsel is also Debtor's counsel.

C. According to the Subpoena, the documents were to be delivered by May 8, 2020. US Bank sent several disks containing the requested documents to Respondent via overnight mail on May 7, 2020 which were received the next day therefore making the Motion moot.

D. Movant incorrectly filed this Motion under the bankruptcy case instead of under the adversary proceeding.

E. Movant fails to propose any language for a protective order.

F. Movant's Motion does not comply with LBR 9014(d)(3)(D) in that it does not provide "any evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Furthermore, Movant has not filed any declarations that comply with FRCP 56(c)(4) or any documents in support of the Motion.

G. Movant's Notice of Hearing does not comply with LBR 9014-1(d)(3)(B) by not advising respondents

" (i) whether and when written opposition must be filed, the deadline for filing and serving it and the names and addresses of the persons who must be served with any opposition; (ii) that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition; and (iii) that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling or can view any pre-disposition hearing by checking the Court's website."

APPLICABLE LAW

Rule 45(d) of the Federal Rules of Civil Procedure provides in part for the protection of a person subject to a subpoena, specifically–

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

[. . .]

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information[.]

Fed. R. Civ. P. 45.

Rule 26(c) provides in part of protective orders. Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(A) forbidding the disclosure or discovery;

[. . .]

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

[. . .]

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and . . .

Fed. R. Civ. P. 26.

DISCUSSION

General Housekeeping

Notice as a Motion Under LBR 9014–1(f)(1) or (f)(2) is Unclear

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 to requesting the court for an order to quash Plaintiff's subpoena to produce documents, and the hearing will be 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).

Notice Fails to Meet the Requirements of Local Rules as to Contents

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Movant failed to include statement about viewability of tentative rulings on court website. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DECISION

Movant's "counsel" filed a Motion making several factual assertions. However, no declaration of the agent or representative for Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

As explained by the Respondent, discovery is proper relating to necessary and proper documents and information in this adversary proceeding relating to the actions and conduct of the Defendant-Debtor. The allegations in the Complaint include:

> 6. In his Schedules filed on August 19, 2019, Debtor made a number of assertions under oath which were not true, including, but not limited to, the following:
> . . .
> c. Debtor stated that within four years before filing bankruptcy, Debtor (i) only owned or had in interest or (ii) was a member or an officer or director of Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC; however, Plaintiff is informed and believes, and thereon alleges, that Debtor also owned or had an interest in or was a member or an officer or director of Gold Management, Inc.; Kamhar Gold LLC; H S Gold Mine, LLC; K & K Gold LLC; and Dhami Investments LLC, among other entities;
>
> d. Debtor stated that he did not hold and negotiable or non-negotiable instruments; however, Plaintiff is informed and believes, and thereon alleges, that Debtor failed to disclose that he was the holder of three promissory notes totaling more than $350,000; . . . .

19-9021; Complaint, Dckt. 1.

The Response, Supporting Declaration, and Exhibits filed by Respondent, Dckts. 164, 165, 166, provide further detailed explanation as to the relevance, need and appropriateness for the discovery. These include Debtor being the 100% shareholder of Kirksville Hotel Management, and that such documents where previously obtained via a Rule 2004 Examination.

There is no burden or intrusion on the Movant. Rather, it is just financial information, which is focused on the Defendant-Debtor's actions to transfer monies to himself. Merely because Movant would prefer that information concerning the Debtor-Defendant not be disclosed is not the basis for barring proper discovery.

Unlicensed Practice of Law

The present Motion is on the letterhead of Jerome A Clay, Cal. Bar. No. 327175. Dckt. 137. However, Mr. Clay does not sign the Motion, but it is signed by "Harjot Dhami," who is identified as the president of Kirksville Hospitality, Inc.

As every licensed attorney knows, corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The use of the attorney's pleading and Harjot Dhami signing the Motion results in Harjot Dhami engaging in the unlicensed practice of law and being aided and abetted in such by attorney Jerome A. Clay. A check of the State Bar of California website member information discloses that no person with the name Harjot Dhami is licensed as an attorney in California. [FN. 1] The State Bar website identifies Jerome A. Clay as a licensed attorney since November 21, 2019. [FN. 2] The court says "aided and abetted" in light of the Clerk's Office identifying this Motion as having been filed electronically by Jerome Clay using his unique electronic filing user ID and password.

FN. 1.
http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?FreeText=Harjot+Dhami&SoundsLike=false

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/327175

The Court by separate orders to show cause will address the unlicensed practice of law, the improper use of the electronic filing user ID and password by a licensed attorney to file pleadings for another person, and the aiding and abetting Harjot Dhami in the unlicensed practice of law in this federal court, which in addition to the corrective sanctions of this court, shall include the referral of these matters to the Chief Judge of the District Court for the consideration of punitive sanctions and consideration of counsel's admission to practice in the Eastern District of California.

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 Quash and for Protective Order by Kirksville Hotel Management, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

16. 19-90751-E-7 KAMALDIP DHAMI
JC-4 Harry Gill

MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER
5-7-20 [146]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 76 days' notice was provided. 14 days' notice is required.

The Motion to Quash and for Protective Order was not 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. Opposition was filed.

The Motion to Quash and for Protective Order is denied.

The present Motion to Quash and for Protective Order has been filed by Gold Management, Inc., ("Movant"). The claims are asserted against Wilmington Trust National Association ("Respondent"). Respondent's Subpoena requested U.S. Bank National Association provide the following documents:

1. Bank Statements since January 1, 2014 for all accounts in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

2. Bank statements since January 1, 2014 for all accounts in the name of Kirksville.

3. Copies of checks greater than $10,000.00 made payable to Debtor or deposited into any account in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

4. Copies of wires greater than $10,000.00 deposited into any account the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

5. Copies of checks greater than $10,000.00 payable to Kirksville or deposited into any account in the name of Kirksville since January 1, 2014.

6. Copies of wires greater than $10,000.00 deposited into any account in the name of Kirksville since January 1, 2014.

REVIEW OF MOTION

In asserting this claim pursuant to Federal Rules of Civil Procedure Rules 45 and 26, Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. Plaintiff seeks information that is irrelevant to the present action and "involves intrusion into the private financial rights of Movant and its shareholder, directors, and officers that are not parties to the above litigation."

B. Plaintiff seeks evidence that is overly broad and "not reasonably calculated to lead to the discovery of admissible evidence."

C. If the discovery is not quashed, Movant seeks a protective order to limit the scope of discovery to items Plaintiff can prove are relevant to the current matter.

Movant did not provide a Declaration in support of the Motion.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 2, 2020. Dckt. 160. Respondent filed the Declaration of Glen R. Segal in support of Creditor's Opposition on July 2, 2020, Dckt. 161. Respondent opposes the Motion on the following grounds:

A. Debtor failed to disclose in his schedules he held an interest in Gold Management, Inc. which is listed at the same address as Debtor's residence. Debtor further served as Secretary, President, a member of the board of directors, and the original registered agent for Gold Management, Inc. Debtor seems to have ownership interests in Movant and Gold Management, Inc.

B. Movant's counsel is also Debtor's counsel.

C. According to the Subpoena, the documents were to be delivered by May 8, 2020. US Bank sent several disks containing the requested documents to Respondent via overnight mail on May 7, 2020 which were received the next day therefore making the Motion moot.

D. Movant incorrectly filed this Motion under the bankruptcy case instead of under the adversary proceeding.

E. Movant fails to propose any language for a protective order.

F. Movant's Motion does not comply with LBR 9014(d)(3)(D) in that it does not provide "any evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Furthermore, Movant has not filed any declarations that comply with FRCP 56(c)(4) or any documents in support of the Motion.

G. Movant's Notice of Hearing does not comply with LBR 9014-1(d)(3)(B) by not advising respondents

"(i) whether and when written opposition must be filed, the deadline for filing and serving it and the names and addresses of the persons who must be served with any opposition; (ii) that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition; and (iii) that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling or can view any pre-disposition hearing by checking the Court's website."

APPLICABLE LAW

Rule 45(d) of the Federal Rules of Civil Procedure provides in part for the protection of a person subject to a subpoena, specifically–

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

[. . .]

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information[.]

Fed. R. Civ. P. 45.

Rule 26(c) provides in part of protective orders. Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

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Fed. R. Civ. P. 26.

DISCUSSION

General Housekeeping

Notice as a Motion Under LBR 9014–1(f)(1) or (f)(2) is Unclear

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 to requesting the court for an order to quash Plaintiff's subpoena to produce documents, and the hearing will be 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).

Notice Fails to Meet the Requirements of Local Rules as to Contents

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Movant failed to include statement about viewability of tentative rulings on court website. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DECISION

Movant's "counsel" filed a Motion making several factual assertions. However, no declaration of the agent or representative for Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

As explained by the Respondent, discovery is proper relating to necessary and proper documents and information in this adversary proceeding relating to the actions and conduct of the Defendant-Debtor. The allegations in the Complaint include:

> 6. In his Schedules filed on August 19, 2019, Debtor made a number of assertions under oath which were not true, including, but not limited to, the following:
> . . .
> c. Debtor stated that within four years before filing bankruptcy, Debtor (i) only owned or had in interest or (ii) was a member or an officer or director of Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC; however, Plaintiff is informed and believes, and thereon alleges, that Debtor also owned or had an interest in or was a member or an officer or director of Gold Management, Inc.; Kamhar Gold LLC; H S Gold Mine, LLC; K & K Gold LLC; and Dhami Investments LLC, among other entities;
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> d. Debtor stated that he did not hold and negotiable or non-negotiable instruments; however, Plaintiff is informed and believes, and thereon alleges, that Debtor failed to disclose that he was the holder of three promissory notes totaling more than $350,000; . . . .

19-9021; Complaint, Dckt. 1.

The Response, Supporting Declaration, and Exhibits filed by Respondent, Dckts. 160, 161, 162, provide further detailed explanation as to the relevance, need and appropriateness for the discovery. These include Debtor having formed Gold Management, and have served as its secretary, president, and on its board of directors. Further that such documents have already been produced.

There is no burden or intrusion on the Movant. Rather, it is just financial information, which is focused on the Defendant-Debtor's actions to transfer monies to himself. Merely because Movant would prefer that information concerning the Debtor-Defendant not be disclosed is not the basis for barring proper discovery.

Unlicensed Practice of Law

The present Motion is on the letterhead of Jerome A Clay, Cal. Bar. No. 327175. Dckt. 137. However, Mr. Clay does not sign the Motion, but it is signed by "Harjot Dhami," who is identified as the president of Kirksville Hospitality, Inc.

As every licensed attorney knows, corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The use of the attorney's pleading and Harjot Dhami signing the Motion results in Harjot Dhami engaging in the unlicensed practice of law and being aided and abetted in such by attorney Jerome A. Clay. A check of the State Bar of California website member information discloses that no person with the name Harjot Dhami is licensed as an attorney in California. [FN. 1] The State Bar website identifies Jerome A. Clay as a licensed attorney since November 21, 2019. [FN. 2] The court says "aided and abetted" in light of the Clerk's Office identifying this Motion as having been filed electronically by Jerome Clay using his unique electronic filing user ID and password.

FN. 1.
http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?FreeText=Harjot+Dhami&SoundsLike=false

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/327175

The Court by separate orders to show cause will address the unlicensed practice of law, the improper use of the electronic filing user ID and password by a licensed attorney to file pleadings for another person, and the aiding and abetting Harjot Dhami in the unlicensed practice of law in this federal court, which in addition to the corrective sanctions of this court, shall include the referral of these matters to the Chief Judge of the District Court for the consideration of punitive sanctions and consideration of counsel's admission to practice in the Eastern District of California.

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 Quash and for Protective Order by Kirksville Hotel Management, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

17. 19-90751-E-7 KAMALDIP DHAMI
JC-5 Harry Gill

MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER
5-7-20 [149]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 76 days' notice was provided. 14 days' notice is required.

The Motion to Quash and for Protective Order was not 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. Opposition has been filed.

The Motion to Quash and for Protective Order is denied.

The present Motion to Quash and for Protective Order has been filed by K & K Gold, LLC, ("Movant"). The claims are asserted against Wilmington Trust National Association ("Respondent"). Respondent's Subpoena requested U.S. Bank National Association provide the following documents:

1. Bank Statements since January 1, 2014 for all accounts in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

2. Bank statements since January 1, 2014 for all accounts in the name of Kirksville.

3. Copies of checks greater than $10,000.00 made payable to Debtor or deposited into any account in the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

4. Copies of wires greater than $10,000.00 deposited into any account the name of Debtor or that Debtor had control or signatory authority on, including, but not limited to Kirksville Hotel Management, LLC and Gold Management, Inc.

5. Copies of checks greater than $10,000.00 payable to Kirksville or deposited into any account in the name of Kirksville since January 1, 2014.

6. Copies of wires greater than $10,000.00 deposited into any account in the name of Kirksville since January 1, 2014.

REVIEW OF MOTION

In asserting this claim pursuant to Federal Rules of Civil Procedure Rules 45 and 26, Movant states the following grounds for relief:

A. Plaintiff seeks information that is irrelevant to the present action and "involves intrusion into the private financial rights of Movant and its shareholder, directors, and officers that are not parties to the above litigation." Mtn. Dckt. 137.

B. Plaintiff seeks evidence that is overly broad and "not reasonably calculated to lead to the discovery of admissible evidence." *Id.*

C. If the discovery is not quashed, Movant seeks a protective order to limit the scope of discovery to items Plaintiff can prove are relevant to the current matter.

Movant did not provide a Declaration in support of the Motion.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 2, 2020. Dckt. 176. Respondent filed the Declaration of Glen R. Segal in support of Creditor's Opposition on July 2, 2020, Dckt. 177. Respondent opposes the Motion on the following grounds:

A. Creditor's Subpoena does not mention Movant K & K Gold, LLC.

B. Debtor failed to disclose in his schedules he held an interest in Gold Management, Inc.,which is listed at the same address as Debtor's residence. Debtor further served as Secretary, President, a member of the board of directors, and the original registered agent for Gold Management, Inc. Debtor seems to have ownership interests in Movant and Gold Management, Inc. Debtor also failed to initially disclose interest in Kirksville Hospitality, Inc., Kirksville Hotel Management, LLC, and K & K Gold, LLC.

C. Movant's counsel is also Debtor's counsel.

D. According to the Subpoena, the documents were to be delivered by May 8, 2020. US Bank sent several disks containing the requested documents to Respondent via overnight mail on May 7, 2020 which were received the next day therefore making the Motion moot.

E. Movant incorrectly filed this Motion under the bankruptcy case instead of under the adversary proceeding.

F. Movant fails to propose any language for a protective order.

G. Movant's Motion does not comply with LBR 9014(d)(3)(D) in that it does not provide "any evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Furthermore, Movant has not filed any declarations that comply with FRCP 56(c)(4) or any documents in support of the Motion.

H. Movant's Notice of Hearing does not comply with LBR 9014-1(d)(3)(B) by not advising respondents

"(i) whether and when written opposition must be filed, the deadline for filing and serving it and the names and addresses of the persons who must be served with any opposition; (ii) that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition; and (iii) that respondents can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling or can view any pre-disposition hearing by checking the Court's website."

APPLICABLE LAW

Rule 45(d) of the Federal Rules of Civil Procedure provides in part for the protection of a person subject to a subpoena, specifically–

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

[. . .]

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information[.]

Fed. R. Civ. P. 45.

Rule 26(c) provides in part of protective orders. Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(A) forbidding the disclosure or discovery;

[. . .]

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

[. . .]

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and . . .

Fed. R. Civ. P. 26.

DISCUSSION

General Housekeeping

Notice as a Motion Under LBR 9014–1(f)(1) or (F)(2) is Unclear

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 to requesting the court for an order to quash Plaintiff's subpoena to produce documents, and the hearing will be 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).

Notice Fails to Meet the Requirements of Local Rules as to Contents

The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Movant failed to include statement about viewability of tentative rulings on court website. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DECISION

Movant's "counsel" filed a Motion making several factual assertions. However, no declaration of the agent or representative for Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding–the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

As explained by the Respondent, discovery is proper relating to necessary and proper documents and information in this adversary proceeding relating to the actions and conduct of the Defendant-Debtor. The allegations in the Complaint include:

> 6. In his Schedules filed on August 19, 2019, Debtor made a number of assertions under oath which were not true, including, but not limited to, the following:
> . . .
> c. Debtor stated that within four years before filing bankruptcy, Debtor (i) only owned or had in interest or (ii) was a member or an officer or director of Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC; however, Plaintiff is informed and believes, and thereon alleges, that Debtor also owned or had an interest in or was a member or an officer or director of Gold Management, Inc.; Kamhar Gold LLC; H S Gold Mine, LLC; K & K Gold LLC; and Dhami Investments LLC, among other entities;
>
> d. Debtor stated that he did not hold and negotiable or non-negotiable instruments; however, Plaintiff is informed and believes, and thereon alleges, that Debtor failed to disclose that he was the holder of three promissory notes totaling more than $350,000; . . . .

19-9021; Complaint, Dckt. 1.

The Response, Supporting Declaration, and Exhibits filed by Respondent, Dckts. 177, 178, 179, provide further detailed explanation as to the relevance, need and appropriateness for the discovery. These include Debtor having an interest in K&K Gold, LLC. Further, that the subpoena at issue does not request production of any documents or information relating to K&K Gold, LLC.

There is no burden or intrusion on the Movant. Rather, it is just financial information, which is focused on the Defendant-Debtor's actions to transfer monies to himself. Merely because Movant would prefer that information concerning the Debtor-Defendant not be disclosed is not the basis for barring proper discovery.

Unlicensed Practice of Law

The present Motion is on the letterhead of Jerome A Clay, Cal. Bar. No. 327175. Dckt. 137. However, Mr. Clay does not sign the Motion, but it is signed by "Harjot Dhami," who is identified as the president of Kirksville Hospitality, Inc.

As every licensed attorney knows, corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The use of the attorney's pleading and Harjot Dhami signing the Motion results in Harjot Dhami engaging in the unlicensed practice of law and being aided and abetted in such by attorney Jerome A. Clay. A check of the State Bar of California website member information discloses that no person with the name Harjot Dhami is licensed as an attorney in California. [FN. 1] The State Bar website identifies Jerome A. Clay as a licensed attorney since November 21, 2019. [FN. 2] The court says "aided and abetted" in light of the Clerk's Office identifying this Motion as having been filed electronically by Jerome Clay using his unique electronic filing user ID and password.

FN. 1.
http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?FreeText=Harjot+Dhami&SoundsLike=false

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/327175

The Court by separate orders to show cause will address the unlicensed practice of law, the improper use of the electronic filing user ID and password by a licensed attorney to file pleadings for another person, and the aiding and abetting Harjot Dhami in the unlicensed practice of law in this federal court, which in addition to the corrective sanctions of this court, shall include the referral of these matters to the Chief Judge of the District Court for the consideration of punitive sanctions and consideration of counsel's admission to practice in the Eastern District of California.

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 Quash and for Protective Order by K & K Gold, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

FINAL RULINGS

18. 20-90221-E-7 BSH-2 | **DEAN/KRISTIN MOSER** **Brian Haddix** | **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** **6-5-20 [17]**

Final Ruling: No appearance at the July 16, 2020 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, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.

Dean Moser and Kristin Moser ("Debtors") seek to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because they were unaware until the Meeting of Creditors that certain property can be exempt from the bankruptcy estate. Upon learning this, they would like to convert to Chapter 13.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

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 Convert filed by Dean Moser and Kristin Moser ("Debtors") 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 Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

19. 20-90044-E-7 UST-1 | **GINNED WILLIAMS** **Pro Se** | **MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)** **5-7-20 [55]**

DEBTOR DISMISSED: 6/11/2020

Final Ruling: No appearance at the July 16, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 Denial of Discharge having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

20. 11-91064-E-7 MHK-3 | **THOMAS WASHBURN** **Patrick Greenwell** | **MOTION FOR COMPENSATION BY LAW OFFICE OF MEEGAN, HANSCHU &KASSENBROCK FOR ANTHONY ASEBEDO, TRUSTEES ATTORNEY(S) 6-5-20 [45]**

Final Ruling: No appearance at the July 16, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 5, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Meegan, Hanshu & Kassenbrock, the Attorney ("Applicant") for Eric J. Nims, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 28, 2019 through May 31, 2020. The order of the court approving employment of Applicant was entered on April 1, 2019. Dckt. 30. Applicant requests fees in the amount of $4,320.00 and costs in the amount of $96.20.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, efforts to assess and recover property of the estate, review of claims and exemptions, and employment of trustee's attorney. 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 7.2 hours in this category. Applicant drafted a motion to compromise with the medical products supplier, and communicated with Trustee and settlement administrator regarding the claim and the compromise.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.8 hours in this category. Applicant communicated with the settlement administrator about debtor's claim regarding defective medical products, and obtained the administrator's agreement to remit settlement proceeds to the Estate.

Claims Issue: Applicant spent 0.3 hours in this category. Applicant reviewed claims filed in the Chapter 7 case after reopening.

Employment and Compensation of Professionals: Applicant spent 3.8 hours in this category. Applicant drafted and filed applications for Applicant's employment and this instant Motion.

Exemptions: Applicant spent 1.8 hours in this category. Applicant reviewed Debtor's initial exemptions claims and amendments, and communicated with Trustee and Debtor's counsel on whether Debtor's settlement funds would be subject to an exemption claim.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Anthony Asebedo	14.9	$300.00	$4,470.00
	0	$0.00	$0.00
Total Fees for Period of Application			$4,470.00

The rates charge was $300.00 per hour, but the effective rate was $289.93 per hour. Putting the total fees at $4,320.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $96.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.05 per page	$43.00
PACER Online Court Records Research		$5.80
Postage		$47.40
Total Costs Requested in Application		$96.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $4,320.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $96.20 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$4,320.00
Costs and Expenses	$96.20

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

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

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

The Motion for Allowance of Fees and Expenses filed by Meegan, Hanshu & Kassenbrock, the Attorney ("Applicant") for Eric J. Nims, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Meegan, Hanshu & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:

Meegan, Hanshu & Kassenbrock, Professional employed by the Chapter 7 Trustee

Fees in the amount of $4,320.00
Expenses in the amount of $96.20,

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

21. 10-90080-E-7 FRED EICHEL MOTION TO DISMISS COMPLAINT
JAD-2 Jessica Dorn WITHOUT PREJUDICE
21 thru 22 6-15-20 [85]

Final Ruling: No appearance at the July 16, 2020 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, Creditors, and Office of the United States Trustee on June 15, 2020. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Motion for Violation of Discharge Injunction Without Prejudice 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 Dismiss the Motion for Violation of Discharge Injunction Without Prejudice is granted and the Motion is dismissed without prejudice.

Fred Charles Eichel ("Plaintiff-Debtor") moves for the court to issue an order authorizing dismissal of Plaintiff's Motion for Violation of Discharge Injunction pursuant to Federal Rules of Procedure 41(a)(2).

APPLICABLE LAW

Rule 41(a)(2) specifically provides:

> (2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 41.

Rule 41 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper. FED. R. BANKR. P. 7041.

DISCUSSION

Plaintiff has provided notice to all interested parties, including the Trustee and the United States Trustee according to the notice filed as part of this motion. Dckt. 86. Both Trustee and the U.S. Trustee were served on June 15, 2020. Dckt. 88.

Plaintiff asserts the dismissal is due to Creditor's counsel having passed away during causing the matter to be continued multiple times to allow Creditor the opportunity to find new counsel which has resulted in Plaintiff-Debtor incurring additional costs and attorney fees. Plaintiff-Debtor does not have the financial meant to continue the litigation.

Creditor has not file any opposition to the Motion to Dismiss.

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 Dismiss Complaint Without Prejudice filed by Fred Charles Eichel ("Plaintiff-Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Motion for Violation of Discharge Injunction is dismissed without prejudice.

22. 10-90080-E-7 **FRED EICHEL** **CONTINUED PRE-EVIDENTIARY HEARING RE: MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
JAD-2 **Jessica Dorn** **9-7-18 [31]**

Final Ruling: No appearance at the July 16, 2020 Status Conference is required.

Debtor's Atty: Jessica A. Dorn
Creditor's Atty: Cort V. Wiegand

Notes:
Continued from 3/12/20. A motion to dismiss this contested matter, if any, to be filed and served by Movant on or before 3/25/20. If no motion to dismiss is not timely filed, Parties to file and serve their respective Pre-Evidentiary Hearing Statements on or before 6/4/20.

The Pre-Evidentiary Hearing is is concluded and removed from the calendar, the court having dismissed the Motion without prejudice.

On June 15, 2020, Fred Eichel, the Movant Debtor, filed a Motion to Dismiss the Motion for Intentional Violation of the Bankruptcy Discharge without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041, 9014. The Motion recounts some of the unfortunate events occurring in connection with this Contested Matter. The hearing on the Motion to Dismiss is set for 10:00 a.m. on July 16, 2020, and the Motion was granted by final ruling.

23. 19-90694-E-7 BLF-6

KEVIN BATES
Richard Kwun

MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, LLP, ACCOUNTANT(S)
5-26-20 [50]

Final Ruling: No appearance at the July 16, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Paul E. Quinn of Ryan, Christie, Quinn & Horn, LLP, the Accountant ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 6, 2020, through May 19, 2020. The order of the court approving employment of Applicant was entered on January 15, 2020. Dckt. 34. Applicant requests fees in the amount of $1,850.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include reviewing the debtor's financial books and records, filing bankruptcy estate tax returns, reviewing the valuation of the Estate's interest in real properties, and preparing other tax-related matters. 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.

General Administration: Applicant spent 1.9 hours in this category. Applicant communicated with Trustee for a case overview, reviewed list of creditors for potential conflicts of interest, reviewed an executed employment application, and prepared a fee application.

Valuation of Estate's Interest in Real Property: Applicant spent 1.5 hours in this category. Applicant reviewed matters pertaining to the Estate's interest in a real property with the consideration of the life estate interest of debtor's mother in that property.

Tax Return and Tax Related Matters: Applicant spent 2.6 hours in this category. Applicant reviewed debtor's historical tax returns and transactional activity in Trustee's Form 2; compiled financial data, communicate with tax authorities' representatives, and prepared federal and state tax returns.

Investigating Potential Tax Consequences: Applicant spent 1.4 hours in this category. Applicant investigated potential tax consequences and reviewed and revised a declaration supporting Trustee's motion to sell the Estate's interest in a real property.

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**
Paul E. Quinn	7.4	$250.00	$1,850.00
	0	$0.00	$0.00

Total Fees for Period of Application	$1,850.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,850.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $1,850.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Paul E. Quinn of Ryan, Christie, Quinn & Horn, LLP ("Applicant"), Accountant for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Paul E. Quinn of Ryan, Christie, Quinn & Horn, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Paul E. Quinn of Ryan, Christie, Quinn & Horn, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,850.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

24. 19-90694-E-7 KEVIN BATES
BLF-7 Richard Kwum
24 thru 25

MOTION FOR COMPENSATION FOR REMAX EXECUTIVE, REALTOR(S)
5-26-20 [56]

Final Ruling: No appearance at the July 16, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for services rendered on September 23, 2019. The order of the court approving employment of Applicant was entered on September 27, 2019. Dckt. 27. Applicant requests fees in the amount of $137.50.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include investigations pertaining to the sale of real properties. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided. Applicant spent 1.25 hours investigating two real properties. Applicant researched the public record, reviewed comparable sales, obtained preliminary title reports, and established valuation and possible equity for the properties.

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**
Bob Brazeal	1.25	$110.00	$137.50
	0	$0.00	$0.00
Total Fees for Period of Application			$137.50

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $137.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $137.50

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

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

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

The Motion for Allowance of Fees and Expenses filed by Bob Brazeal ("Applicant"), Real Estate Broker for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Bob Brazeal, Professional employed by the Chapter 7 Trustee

Fees in the amount of $137.50

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

25. 19-90694-E-7 BLF-8

KEVIN BATES
Richard Kwun

MOTION FOR COMPENSATION BY LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
5-26-20 [62]

Final Ruling: No appearance at the July 16, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 27, 2020. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 19, 2019 through July 16, 2020. The order of the court approving employment of Applicant was entered on September 25, 2019. Dckt. 19. Applicant requests fees in the amount of $10,170.00 and costs in the amount of $566.80. [FN.1]

FN.1. The court notes a minor clerical error in the Motion requesting $566.70 in costs and expenses. A review of the costs and expenses listed in Exhibit A (Dckt. 66) reflect a total of $566.80. The court has completed the ruling on the assumption the costs requested are in the amount of $566.80.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; efforts to assess and recover property of the estate; and employment and sale of real property. The Estate has $90,000.00 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 7.7 hours in this category. Applicant prepared the fee agreement and application for her employment; extended the deadline to file a motion to dismiss and to file complaint objecting to debtor's discharge; and prepared employment and fee applications for the estate's accountant as well as her own.

Efforts to Assess and Recover Property of the Estate: Applicant spent 4.6 hours in this category. Applicant prepared a letter to debtor's brother regarding an avoidable prepetition transfer, and communicated extensively with debtor's counsel and other interested parties regarding the estate's interest in a real property.

Employment of Realtor and Sale of Real Property: Applicant spent 21.6 hours in this category. Applicant prepared and filed the application to employ a realtor to sell the estate's interest in a real property; prepared the sale agreement and corresponding motion to approve the sale; attended court hearings regarding the motion; and prepared a grant deed transferring the estate's interest in the property to the buyer. Applicant also communicated with the Trustee and buyer to finalize documents for signing, and prepared the application for realtor's compensation.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Loris L. Bakken	33.9	$300.00	$10,170.00
	0	$0.00	$0.00
Total Fees for Period of Application			$10,170.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $566.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$139.10
Copying	$0.10 per page	$86.20
Court Fees (Certified Copy of Petition)		$11.50
Recording Fees (Record Bankruptcy Petition)		$113.00
Recording Fees (Record Grant Deed, PCOR,, and DTTax)		$217.00
		$0.00
Total Costs Requested in Application		$566.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $10,170.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $566.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$10,170.00
Costs and Expenses	$566.80

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $10,170.00
> Expenses in the amount of $566.80,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

26. 16-90603-E-7
DB-3

MARK ONE CORPORATION
Cecily Dumas

CONTINUED MOTION FOR SUPPLEMENTAL ORDER TO ORDER APPROVING SETTLEMENT
5-7-20 [181]

Final Ruling: No appearance at the July 16, 2020 Hearing is required.

Due to conflicting events in the court's schedule, the hearing on this Motion is continued to 10:30 a.m. on August 6, 2020, so the court can have prepared a polished, complete tentative ruling for the Parties.