UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 19, 2018, at 10:30 a.m.

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1. **16-90500-E-11** **ELENA DELGADILLO** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS FOR HOWARD S. NEVINS**
HSM-24 **Len ReidReynoso** **6-28-18 [367]**

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Irma Edmonds, the Chapter 11 ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 1, 2017, through July 19, 2018. The order of the court approving employment of Applicant was entered on January 2, 2017. Dckt. 98. Applicant requests fees in the amount of $68,598.00 and costs in the amount of $785.87.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R.

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization

to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include asset disposition, work regarding claims, litigation work, and general case administration. The Estate has approximately $430,647.70 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 75.80 hours in this category, including 2.60 hours at no charge. Applicant worked with Client and her CPA on an estate tax ID issue, drafted and filed status reports, appeared at status conferences and other hearings, communicated with Client regarding monthly operating reports, and drafted, filed and served multiple motions. Applicant also analyzed and evaluated the legal and procedural considerations of prosecuting several motions and advised Client on matters related to the possible and planned dismissal of the Chapter 11 case.

Asset Disposition: Applicant spent 90.40 hours in this category, including 1.90 hours at no charge. Applicant advised and assisted Client with the disposition of real property assets and cash assets. Applicant assisted with sales related activities, sale motions, and a variety of pre- and post-sales tasks. Applicant communicated with Client's CPA regarding tax consequences of real property sales and other aspects of completing the administration of the case.

Litigation: Applicant spent 0.30 hours in this category. Applicant reviewed Debtor's pre-petition appeal of a state court judgement and communicated with Debtor's counsel on the matter.

Claims: Applicant spent 10.40 hours in this category, including 0.10 hours at no charge. Applicant worked with Client and advised on several claims, including the claim of a judgment creditor and claims of taxing authorities. Applicant communicated with counsel for creditor and analyzed the legal and practical issues related to distribution to creditors with allowed claims. Applicant prosecuted motion to approve final distribution and worked with Client on execution of payments.

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**
Aaron Avery, Attorney	20.00	$329.20	$6,584.00
Howard Nevins, Attorney	152.30	$407.18	$62,014.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$68,598.00

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

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$70,180.00	$56,144.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$70,180.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $785.87 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $253.83.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Court Fees		$580.50
Out of Town Travel		$183.71
Delivery Services		$21.66
		$0.00
Total Costs Requested in Application		$785.87

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $68,598.00 are approved pursuant to 11 U.S.C. § 330, and prior Interim Fees in the amount of $70,180.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11case.

Costs & Expenses

Second and Final Costs in the amount of $785.87 pursuant to 11 U.S.C. § 330 are approved, and prior Interim Costs in the amount of $193.83 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Chapter 11 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$68,598.00
Costs and Expenses	$785.87

pursuant to this Application and prior interim fees of $70,180.00 and interim costs of $193.83 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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Irma Edmonds, the Chapter 11 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 Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional employed by the Chapter 11 Trustee

Fees in the amount of $68,598.00
Expenses in the amount of $785.87,

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

The fees and costs pursuant to this Motion, and fees in the amount of $70,180.00 and costs of $193.83 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

2. **16-90500-E-11** **ELENA DELGADILLO** **MOTION FOR COMPENSATION FOR**
JES-2 **Len ReidReynoso** **JAMES E. SALVEN, ACCOUNTANT(S)**
6-13-18 [352]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is xxxxxxxxxxxxx.

James Salven, the Accountant("Applicant") for Irma Edmonds, the Chapter 11 Trustee ("Client"), makes First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 22, 2016, through June 13, 2018. The order of the court approving employment of Applicant was entered on January 2, 2017. Dckt. 99. Applicant requests fees in the amount of $61,196.00 and costs in the amount of $736.62.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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 12.6 hours in this category. Applicant prepared employment application and fee application, reviewed the docket, and requested documents.

Monthly Operating Reports: Applicant spent 257.6 hours in this category. Applicant prepared twenty-one monthly operating reports.

Tax Matters: Applicant spent 66.0 hours in this category. Applicant compiled tax basis, conducted tax analysis, and prepared tax returns.

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**
James Salven, CPA	160.4	$250.00	$40,100.00
Salem Michali	175.8	$120.00	$21,096.00
	0	$0.00	$0.00
Total Fees for Period of Application			??

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $736.62 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Copies	$0.15	$363.15
Envelopes	$0.20	$1.60
Lacerte Tax Proc		
- First Return		$133.00
- Return Copies		$26.40
- Final Return		$140.00
- Return Copies		$30.60
Fed Ex to PDF MOR motes		$5.75
Serve Fee App		$36.12
Total Costs Requested in Application		$736.62

U.S. TRUSTEE'S OPPOSITION

Tracy Davis ("U.S. Trustee") filed an Opposition on June 27, 2018. Dckt. 365. U.S. Trustee opposes the Application because it fails to disclose Applicant's hourly rates charged, or how the requested fees were calculated, and time spent on monthly operating report preparation appears unreasonably high.

U.S. Trustee states that 257.6 hours seems an unreasonable amount of time to prepare twenty-sour standard form monthly operating reports with few monthly transactions. Each monthly operating report takes over 10.73 hours on average. For example, the February 2018 monthly operating report included only three deposits and two disbursements; however, 10.1 hours were expended to prepare the report.

U.S. Trustee also raises the concern that unreasonable associate training hours (up to thirty-seven hours) may have been included under the monthly operating report time entries for corrections.

APPLICANT'S RESPONSE

Applicant filed a Response on July 3, 2018. Dckt. 374. Applicant admits that the hourly rates were inadvertently omitted and states that corrected exhibits were filed to show the rates. Applicant changes the spreadsheet format to show how the requested fees were calculated.

In responding to the opposition regarding unreasonable hours, Applicant states that (1) additional work is created in preparing the monthly operating reports because this case involves rent rolls; (2) the format of the monthly operating reports does not follow general accounting formats, so Applicant spent time checking for internal consistency; (3) Applicant's use of "review and correct" in the exhibits includes situations when no correction is required, but Applicant's professional standard mandated the review; (4) despite a lack of experience, the staff member's work reflects a cost-effective choice.

Applicant holds the opinion that the fees are reasonable under the circumstances, and he looks forward to further guidance from U.S. Trustee or the court on the billing hours and rates.

FEES AND COSTS & EXPENSES ALLOWED

In the Motion, Applicant merely states that Applicant rendered professional services to the Trustee, which services are set forth in the Exhibits. Other than stating a dollar amount, the Motion itself provides no information as to the services provided.

The Declaration of James Salven, Dckt. 355, provides no additional testimony, but directs the court to the Exhibits.

Going to the Exhibits, Schedule C is the task billing summary of the work done. Dckt. 354, 376.

Case Administration 12.6 Hours.....$

Monthly Operating Reports 249 Hours.....$

Tax Matters 66 Hours

Tax Analysis of Disposition of Property of the Estate 33.4 Hours.....$

Analysis of Monthly Operating Reports/Data For Tax Returns 32 Hours.....$

No dollar amount computation is provided for the Task Billing Analysis. The court will use the gross computation of allocating the fees to each task in the same proportion as the hours for those tasks bear to the total hours.

Total Dollar Charges	$61,196.00				
Total Hours		336.2			
			Hours	Percentage of Total	Allocation of Fees
Case Administration			12.60	3.75%	$2,293.48
Monthly Operating Reports			249.00	74.06%	$45,323.63

Tax Matters			66.00	19.63%	$12,013.49

The Docket reflects that 24 Monthly Operating Reports, which averages a cost of $1,888.50 per report. Once formatted, it does not appear that these are complex Monthly Operating Reports. Using an composite rate of $200 per hour, the average for each report is 9.5 hours.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. However, the court needs further clarification on the reasonableness of hours spent by Applicant preparing the monthly operating reports.

Costs & Expenses

First and Final Costs in the amount of $736.62 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Chapter 11 Trustee to pay XX% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 11 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$XXX
Costs and Expenses	$736.62

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 James Salven ("Applicant"), Accountant for Irma Edmonds, the Chapter 11 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 James Salven is allowed the following expenses as a professional of the Estate:

James Salven, Professional employed by the Chapter 11 Trustee

Fees $XXX
Expenses in the amount of $736.62,

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

IT IS FURTHER ORDERED that the Chapter 11 Trustee is authorized to pay XX% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

3. **16-90500-E-11** **ELENA DELGADILLO** **MOTION FOR COMPENSATION FOR**
HSM-25 **Len ReidReynoso** **IRMA C. EDMONDS, CHAPTER 11 TRUSTEE O.S.T.**
7-6-18 [380]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2018. By the court's calculation, 13 days' notice was provided. The court set the hearing for July 19, 2018. Dckt. 346.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 11 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.

Irma Edmonds, the Chapter 11 Trustee ("Applicant") for the Chapter 11 Estate of Elena Delgadillo ("Debtor"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 21, 2016, through July 19, 2018. The order of the court approving employment of Applicant was entered on December 22, 2018. Dckt.89. Applicant requests fees in the amount of $76,900.00 and costs in the amount of $2,523.94.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

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 Chapter 11 Estate include administering all assets of the bankruptcy estate and administering payments made to allowed claims of creditor and other claimants. Applicant has also coordinated and communicated with Debtor's counsel and collaborated with other professionals in the administrative activities as required to fulfill the duties of Chapter 11 Trustee. The Estate has approximately $430,647.70 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. Applicant provides a twenty-five-page timesheet report in support of the hours billed during the application period. Dckt. 380. Applicant did not provide a breakdown of hours billed by substantive category as detailed in her Motion for Compensation. *Id*. Applicant also provided a request for fees based on the formula set forth in 11 U.S.C. § 326(a), as outlined in the next section below.

Asset Investigation: Applicant reviewed petition, schedules, pleadings, and pre-petition transfers of assets. Applicant performed site visits and reviewed issues related to properties. Applicant also analyzed, reviewed with counsel, and made recommendations regarding several litigation matters in which Debtor was involved in pre-petition.

Asset Administration: Applicant addressed issues raised by the sale of properties, released payments in connection with the sale of properties, and reviewed and approved motion for sale of real property. Applicant worked on administrative tasks related to management of properties including securing

insurance and following up on payments from tenants and others. Applicant addressed lien release payments related to lien claim and loans secured by estate assets.

Case Administration: Applicant performed tasks supporting general administration of bankruptcy case, including: meeting with creditors, conducting section 341 meetings, consulting with counsel and interested parties, review of monthly operating reports, communicating with professionals on compensation issues, attending status conferences and other hearings and communicating with professionals and other parties. Applicant also reviewed proofs of claims and approved motions for distributions.

Compensation: Applicant reviewed interim and final compensation applications and time records from professionals. Applicant communicated with Counsel regarding compensation issues and provided details and supporting exhibits related to Trustee's compensation application.

Tax Issues: Applicant consulted with professionals on general tax issues and planning. Applicant reviewed CPA's analysis and planned for tax compliance in the sale of assets.

Plan and Disclosure Statement: Applicant reviewed issues related to potential reorganization or liquidation plan and communicated with counsel.

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**
Irma Edmonds, Chapter 11 Trustee	222.60	$350.00	$77,910.00
Irma Edmonds, Chapter 11 Trustee	0.80	$80.00	$64.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Fees for Period of Application - Subtotal			$77,974.00
Reduction for cap imposed by 11 U.S.C. § 326(a)			($1,074.00)
Total Fees for Period of Application			**$76,900.00**

Applicant also included fees-based on the formula set forth in 11 U.S.C. § 326(a), based on a compensable distribution of $1,791,037.66. Dckt. 380. Applicant has requested fees of $76,900.00, which is $81.13 less than maximum allowable compensation under the 11 U.S.C. § 326(a) cap. *Id.*

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$47,500.00
3% of the balance of $791,037.66	$23,731.13
Calculated Total Compensation	**$76,981.13**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	**$76,981.13**
Less Previously Paid	$0.00
Total First and Final Fees Requested	**$76,900.00**

The fees are computed on the total compensable distribution of $1,791,037.66, based on a total sum of $2,010,944.93 brought in by the Chapter 11 Trustee, of which she has paid out approximately $1,580,297.23 in court-approved compensation and distributions to creditors. Applicant estimates she will pay out an additional $210,740.43 in remaining final compensation applications. Dckt. 380.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,523.94 pursuant to this application. Dckt. 383.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies (767)	$0.25	$191.75
Distribution		$167.00
Postage		$73.23
Supplies/File Prep		$50.00
Travel/Mileage	$0.54	$1,981.48

Other, including Certified Orders		$60.48
Total Costs Requested in Application		$2,523.94

Fees

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 $76,900.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of $2,523.94 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Chapter 11 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$76,900.00
Costs and Expenses	$2,523.94

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 Irma Edmonds ("Applicant"), Chapter 11 Trustee for the Chapter 11 Estate of Elena Delgadillo ("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 Irma Edmonds is allowed the following fees and expenses as a professional of the Chapter 11 Estate:
>
> Irma Edmonds, Professional employed by the Chapter 11 Estate
>
> Fees in the amount of $76,900.00
> Expenses in the amount of $2,523.94

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

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

4. 16-90500-E-11 LRR-1 | **ELENA DELGADILLO** **Len ReidReynoso** | **CONTINUED MOTION TO DISMISS CASE** **5-24-18 [333]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on May 24, 2018. By the court's calculation, 35 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 court set the hearing for 10:30 a.m. on July 19, 2018. Dckt. 346.

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

The Motion to Dismiss is granted, and the case is dismissed, effective xxxxxxx.

Elena Delgadillo ("Debtor") moves for the court to dismiss this Chapter 11 case pursuant to 11 U.S.C. § 1112(b). Debtor argues that since a Chapter 11 trustee was appointed, all of the claims by creditors have been paid, Debtor has filed all required documents, and Debtor has paid all administrative fees owed.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Debtor argues that through this case, she has preserved her residence and many of her rental properties while selling others to generate enough funds to pay all of her creditors in full.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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 the Chapter 11 case filed by Elena Delgadillo ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case shall be dismissed, effective **xxxxxxxxx**. Counsel for the Chapter 11 Trustee shall lodge with the court on or after **xxxxxx** an order dismissing this case.

5. **16-90500-E-11** **ELENA DELGADILLO**
Len ReidReynoso

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
6-9-16 [1]

Final Ruling: No appearance at the July 19, 2018 status conference is required.

Debtor's Atty: Len ReidReynoso

The Status Conference is removed from the calendar.

Notes:
Continued from 5/31/18

Operating Reports filed: 1/29/18; 3/20/18 [Jan]; 3/20/18 [Feb]; 5/8/18 [Mar]; 6/21/18 (x2)

[HSM-19] Trustee's Motion for Approval of Second and Final Distribution to Creditors filed 1/17/18 [Dckt 302]; Order granting filed 2/22/18 [Dckt 312]

[HSM-20] Motion to Abandon Property of the Estate filed 3/15/18 [Dckt 313]; Order granting filed 3/30/18 [Dckt 324]

[HSM-21] Motion for Allowance of and Authorization to Pay Administrative Income Tax Obligations of Estate filed 4/25/18 [Dckt 235]; set for hearing 5/31/18 at 10:30 a.m.

Trustee's Fourth Chapter 11 Status Report filed 5/22/18 [Dckt 331]

[LRR-1] Debtor's Motion to Dismiss Chapter 11 Case filed 5/24/18 [Dckt 333]; if corrected notice filed this matter will be set for 6/21/18 or 7/12/18 at 10:30 a.m.

6. **18-21107-E-7** **LAURELS MEDICAL SERVICES** **CONTINUED MOTION TO USE CASH COLLATERAL**
TBG-2 **Stephan Brown** **3-8-18 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Proposed Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Authority to Use Cash Collateral is denied as moot.

Laurels Medical Services ("Debtor in Possession") moves for authority to use cash collateral consisting of income from a contract with the Department of Veteran's Affairs to pay monthly business expenses. The contract generates $112,000.00 per month to provide medical transportation services and is subject to a lien filed by the Internal Revenue Service, according to Debtor in Possession.

Debtor in Possession projects that the funds will be used for expense as follows:

Personal Property Collateral			
	Veteran's Affairs Contract	$112,000.00	

	MYGORIDE, Inc. (Medical Services Contractor)		($100,000.00)
	Salary of Officer, Shiraz Mir		($4,000.00)
	Payroll taxes		($400.00)

		Net Proceeds	$7,600.00

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

MARCH 22, 2018 HEARING

At the hearing, Debtor in Possession's counsel stated that Debtor in Possession is working actively to obtain other contracts. Dckt. 31. Debtor in Possession relayed that the payments of the monies are necessary to make post-petition payments to the sub-contractor to keep the existing contract in place.

The court granted the Motion for the period March 22, 2018, through May 31, 2018, and set a continued hearing at 10:30 a.m. on May 24, 2018, to consider a Supplement to the Motion to extend authorization to use cash collateral. Dckt. 33.

The court ordered Debtor in Possession to file and serve supplemental pleadings by May 17, 2018, if further authorization is requested. *Id.*

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

> (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
>
> > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> >
> > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

RULING

On June 18, 2018, the court entered its order converting this case to one under Chapter 7. Dckt. 104. As of that conversion, a Chapter 7 trustee assumed the duties of administering this estate, rendering this matter moot.

The Motion is denied as moot, this case having been converted to one under Chapter 7 on June 18, 2018. Dckt. 104.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied as moot, this case having been converted to one under Chapter 7.

7. **18-21107-E-7** **LAURELS MEDICAL SERVICES** **MOTION TO ABANDON O.S.T.**
MHK-2 **Stephan Brown** **7-11-18 [125]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2018. By the court's calculation, 8 days' notice was provided. The court set the hearing for 10:30 a.m. on July 19, 2018. Dckt. 136.

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

The Motion to Abandon is granted.

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

The Motion filed by J. Michael Hopper ("the Chapter 7 Trustee") requests that the court authorize him to abandon "all assets of the estate" commonly known as:

A. Bank accounts holding no more than $133,260.00 as of July 4, 2018;

B. Accounts receivable of $316,962.69 collected post-petition and distributed largely to MyGoRide, Inc.;

C. Office furniture and equipment of $2,500.00;

D. A pre-petition claim of $4,100,000.00 against the U.S. Veteran's Administration from a contract dispute;

E. An executory contract with the U.S. Veteran's Administration; and

F. Potential avoidance actions against MyGoRide, Inc., for $99,033 paid for pre-petition obligations.

The various assets are encumbered by tax liens to the Internal Revenue Service ("IRS"), securing claims of $435,000.00. The Chapter 7 Trustee reports that the IRS has indicated that it does not agree to the use of cash collateral for any purpose in this case, effectively hamstringing the Chapter 7 Trustee from operating the business when authority ends on October 5, 2018.

The Chapter 7 Trustee also reports that the Estate lacks insurance coverage and could be exposed to liability for any act arising under the Estate's pending contract with a ride-service provider. The Chapter 7 Trustee lacks unencumbered funds to acquire insurance for the Estate, making the Estate subject to the decisions of a third-party executing the contract.

The court finds that there are negative financial consequences for the Estate if it retains the assets in this case. The court determines that the assets are of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon them.

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

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

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

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

A. Bank accounts holding no more than $133,260.00 as of July 4, 2018;

B. Accounts receivable of $316,962.69 collected post-petition and distributed largely to MyGoRide, Inc.;

C. Office furniture and equipment of $2,500.00;

D. A pre-petition claim of $4,100,000.00 against the U.S. Veteran's Administration from a contract dispute;

E. An executory contract with the U.S. Veteran's Administration; and

F. Potential avoidance actions against MyGoRide, Inc., for $99,033 paid for pre-petition obligations.

is abandoned to Laurels Medical Services by this order, with no further act of the Chapter 7 Trustee required.

8. 18-21107-E-7 MHK-3 — LAURELS MEDICAL SERVICES — Stephan Brown — MOTION TO REJECT LEASE OR EXECUTORY CONTRACT O.S.T. 7-11-18 [131]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Executory Contract Parties, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 11, 2018. By the court's calculation, 8 days' notice was provided. The court set the hearing for 10:30 a.m. on July 19, 2018. Dckt. 137.

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

The Motion to Reject Lease or Executory Contract is granted.

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") moves to reject an executory contract with the United States Veteran's Administration. Movant asserts that the contract is of no benefit to the Estate,

especially because the Estate does not have insurance to protect against liability should the contract be performed.

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that the executory contract is disclosed on Official Form 206G at Line 2.1. Dckt. 40.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

> (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

DISCUSSION

Here, Movant has demonstrated a sound business judgment reasons for rejecting the executory contract with the U.S. Veteran's Administration. Movant asserts that the Estate does not hold insurance that would protect it in the event of any liability that arises from the executory contract, and performance of the contract is not providing a benefit to the Estate.

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the executory contract with the U.S. Veteran's Administration. Therefore, the Motion is granted, and Movant is authorized to reject the executory contract with the U.S. Veteran's Administration, pursuant to 11 U.S.C. § 365(a).

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 Reject Lease or Executory Contract filed by J. Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Movant is authorized to reject the executory contract with the U.S. Veteran's Administration, listed on Official Form 206G at Line 2.1 (Dckt. 40).

The rejection of the above executory contract is effective upon issuance of this order, no further act of the Chapter 7 Trustee required.

9.	**18-21107-E-7** **MHK-1**	**LAURELS MEDICAL SERVICES** **Stephan Brown**	**MOTION TO DISMISS CASE, MOTION TO ABANDON AND MOTION TO REJECT LEASE OR EXECUTORY CONTRACT O.S.T.** **7-9-18 [116]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2018. By the court's calculation, 10 days' notice was provided. The court set the hearing for 10:30 a.m. on July 19, 2018. Dckt. 122.

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

The Motion to Dismiss is granted.

This Motion to Dismiss the Chapter 7 bankruptcy case of Laurels Medical Services ("Debtor") has been filed by J. Michael Hopper ("Movant"), the Chapter 7 Trustee. Movant asserts that the case should be dismissed based on the following grounds:

A. The Estate lacks its own insurance coverage to operate Debtor's business and must rely upon coverage against liability being provided by a third-party contractor;

B. The Estate's pre-petition claim for breach of contract against the U.S. Veteran's Administration is of inconsequential value or benefit; and

C. The other Estate assets are encumbered and have no value or benefit.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including unreasonable delay by the debtor that is prejudicial to creditors; nonpayment of any fees and charges required under chapter 123 of title 28; and failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a)(1)–(3).

DISCUSSION

Movant presents three grounds that can constitute cause for dismissing this case. First, the Estate does not maintain its own independent insurance coverage, relying on the coverage selected by third-party contractors. Movant obtained coverage as an additional insured held by the current contractor, but Movant argues that such coverage would evaporate when the contractor's services are finished mid-July 2018.

Second, Movant argues that Debtor's claim for breach of contract against the U.S. Veteran's Administration is of inconsequential value and benefit to the Estate because there will be a significant amount of discovery and factual disputes that would greatly reduce any recovery for the Estate, presuming that litigation is successful. Movant argues that there could be no unencumbered funds to pay counsel to litigate the claim.

Third, Movant presents that the remaining estate assets are of inconsequential value. There are bank accounts valued at approximately $133,260.00 as of July 4, 2018, subject to an IRS lien; accounts receivable of over $300,000.00 that Movant argues has largely been distributed to one of Debtor's contractors; office furniture and equipment of approximately $2,500.00; the above claim for breach of contract; an executory contract with the Veterans's Administration; and a potential avoidance action that Movant argues is encumbered by an IRS lien.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 707(a). The Motion is granted, and the case is dismissed.

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 filed by J. Michael Hopper ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

10. **17-25114-E-7** **HSIN-SHAWN SHENG** **OBJECTION TO CLAIM OF CACH, LLC, CLAIM NUMBER 2**
FF-3 **Gary Fraley** **6-5-18 [93]**

Final Ruling: No appearance at the July 19, 2018 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 5, 2018. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 2 of Cach, LLC is overruled as moot.

Hsin-Shawn Sheng, Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Cach, LLC ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $945.20. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. Objector states that according to the Proof of Claim, the last transaction date was August 30, 2011. The date of last payment on the Statement of Account Information attached to the Proof of Claim states August 30, 2011.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

WITHDRAWAL OF CLAIM

On July 2, 2017, Creditor withdrew its claim in the amount of $945.20. Dckt. 107. Creditor having withdrawn its claim, there is no claim validity for the court to determine. The Objection to the Proof of Claim is overruled 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 Objection to Claim of Cach, LLC ("Creditor") filed in this case by Hsin-Shawn Sheng, Chapter 7 Debtor, ("Objector") having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 2 of Cach, LLC is overruled as moot, the claim having been withdrawn on July 2, 2018.

11. 17-25114-E-7 FF-4 | **HSIN-SHAWN SHENG** **Gary Fraley** | **OBJECTION TO CLAIM OF CAPITAL ONE BANK (USA), N.A., CLAIM NUMBER 3 6-5-18 [97]**

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 5, 2018. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 3-1 of Capital One Bank, N.A. is overruled.

Hsin-Shawn Sheng, Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Capital One Bank, N.A. ("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $7,533.70. Objector asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract.

Objector states that Creditor's proof of claim shows a "Last Payment Date" of February 7, 2014, but she asserts that has not "heard from them nor made any payments to them in eight to ten years." Objector's Declaration, Dckt. 99.

CREDITOR'S RESPONSE

Creditor filed a Response on July 3, 2018. Dckt. 110. Creditor argues that according to its attached payment history for the Claim, Objector made the last payment on February 7, 2014. Because that date is within four years of this case being filed, Creditor argues that it has filed a timely proof of claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extensions of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 3-1 lists the charge off date as November 12, 2010. Dckt. 100. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental point of credit transactions is commonly known by both creditors and consumers alike.)

Objector claims that no payment or other transaction occurred after the "charge-off date" of November 12, 2010. Dckt. 97. Thus, Objector alleges that the four-year statute of limitations expired on November 13, 2014. *Id*.

Conspicuously missing from Objector's Declaration is a statement that her testimony is made under penalty of perjury. Despite her assertion that she has not made payments in eight-to-ten years, Objector has chosen not to state to the court that her own statement is truthful and can be used as credible evidence from a competent witness. FED. R. EVID. 601, 602.

Creditor presented evidence in the form of a print-out of the payment history on Objector's account showing that a payment was made in February 2014, and Objector has not responded or presented any evidence that Creditor's records are inaccurate. The court takes Creditor's presentation as truthful that a payment was made in February 2014. Calculating from that date to the filing date, the court notes that the four-year statute of limitations did not elapse. Creditor filed a timely proof of claim in this case.

Standing of Debtor

Though Debtor may file an objection, there is the issue in a Chapter 7 case whether a debtor has standing—Is there an actual case or controversy? There must be a real economic consequence for Debtor, not merely the desire to fight with the creditor.

If there is not a surplus estate, then Debtor does not have standing to object to Creditor's claim. As addressed in Collier on Bankruptcy, Sixteenth Edition, 502.02[c],

> [c] Objection by Debtor The debtor may be a party in interest with standing to object to a proof of claim. [FN.17 - discussing that objecting debtor must have a pecuniary interest in outcome, such as when there is a surplus estate] Particularly in chapter 12 and chapter 13 cases, the success of the debtor's plan may depend upon the debtor's being able to argue successfully that the debt asserted as a priority claim or a secured claim, which must often be paid in full, 18 is excessive or invalid. Typically, the trustee in such cases does not view it as his or her role to object to particular claims except, perhaps, if they have been tardily filed.
>
> In a chapter 7 case, or a chapter 11 case in which the debtor is not in possession, the debtor usually has no pecuniary interest that would justify objecting to a claim unless there could be a surplus after all claims are paid. An individual debtor, however, in such a case may sometimes have an interest in objecting to particular claims. For example, the debtor may wish to object to an excessive dischargeable claim whose holder would receive distributions that otherwise would be made to the holder of a nondischargeable claim. To the extent that a

> nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize the distribution, thereby relieving the debtor from some or all of the claim of that creditor which would survive the bankruptcy case. The debtor also has an interest if there is any chance that a disallowance will yield a solvent estate that would provide a return to the debtor. The same reasoning applies to equity holders of the debtor. Thus, a debtor may be afforded standing, in certain instances, to object to claims.

The standing to object to a claim goes to the fundamental limits on the exercise of federal judicial power set forth in the U.S. Constitution Article III, Section 2.

The federal courts are not a forum for academic arguments not affecting the rights of such person or one in which that person is attempting to litigate the rights of others who are not before the court (with limited exceptions to this rule, such as class action and other special representative proceedings authorized by Congress). Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006).

One of the first things that a law student learns about American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (citations omitted.)

Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

The issue of standing is so fundamental that it may be raised *sua sponte* by the court. FED. R. CIV. P. 12(h)(3)[1]. A person must have a legally protected interest, for which there is a direct stake in the outcome. 520 U.S. at 64. The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*. 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Id*. In determining whether the plaintiff has the requisite standing and whether the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 (9th Cir. 1987).

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[1] As made applicable to this Adversary Proceeding by Rule 7012, Federal Rules of Bankruptcy Procedure.

The requirement of standing has been addressed in the Ninth Circuit as discussed by the court in *In re Lona*:

> Bankruptcy Code § 502 provides that a 'claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.' The term 'party in interest' is not defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an 'aggrieved person' who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983) (citations omitted); *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 388 (2nd Cir. 1997).
>
> Generally, a chapter 7 debtor does not have standing to object to claims because the debtor has no interest in the distribution of assets of the estate and therefore, is not an 'aggrieved person.' There are two recognized exceptions to this general rule: a chapter 7 debtor will have standing where (1) disallowance of a claim will produce a surplus for the debtor; or (2) where a claim will not be discharged. *In re Willard*, 240 B.R. 664, 668 (Bankr. D. Conn. 1999) (citing In re Toms, 229 B.R. 646, 650-51 (Bankr. E.D. Pa. 1999)); see also, *Menick v. Hoffman*, 205 F.2d 365 (9th Cir. 1953) (debtor was a 'person aggrieved' with standing to challenge disallowance of tax claim where, if tax claim was not paid in bankruptcy, debtor would remain liable for such claim post-discharge).

393 BR 1, 3–4 (Bnkr. N.D. Cal. 2008). See also *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 208 B.R. 448, 454 (B.A.P. 9th Cir. 2004), *aff'd*, 160 Fed. Appx. 644 (9th Cir. 2005), stating:

> Ordinarily, the trustee or some party in interest, other than the debtor, prosecutes claim objections. A debtor, in its individual capacity, lacks standing to object unless it demonstrates that it would be "injured in fact" by the allowance of the claim. *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551, 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1108–09 (9th Cir. 2003), *Dellamarggio v. B-Line, LLC (In re Barker)*, 306 B.R. 339, 2004 WL 361094 at *5 (Bankr. E.D. Cal. 2004); 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy P 502.02[2][c] (15th ed. rev. 2003) ('Collier').

At the hearing, Debtor addressed the issue of standing, stating **xxxxxxxxxxxxxxxxxxx**.

> The Objection is overruled.

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 Objection to Claim of Capital One Bank, N.A.("Creditor") filed in this case by Hsin-Shawn Sheng, Chapter 7 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim is overruled.

12. 18-90029-E-11 MF-24 | **JEFFERY ARAMBEL** **Reno Fernandez** | **MOTION TO SELL FREE AND CLEAR OF LIENS** **6-28-18 [452]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Ellery Ranch, comprising approximately 40.05 acres of almond orchards on Grayson Road at State Highway 33 near Patterson, California ("Property").

The proposed purchaser of the Property is Ty Angle ("Buyer"), and the terms of the sale are:

A. Purchase price of $960,750.00;

B. Sale subject to closing of sales for Maring Ranch and Grayson Ranch;

C. Deposit from Buyer of $50,000.00;

D. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 2% of the gross purchase price to be split between buyer and seller;

E. No broker's commission;

F. Sale of Property "as is," "where is," and "with all faults;"

G. Due diligence period to expire on July 1, 2018, with escrow to close on August 1, 2018; and

H. Sale includes any crop grown in 2018 and its proceeds.

The Motion seeks to sell the Property free and clear of the liens of Metropolitan Life Insurance Co. and SBN V Ag I LLC ("Creditors"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that both creditors are *likely* to consent to the sale, but no consent has been presented to the court at the time of reviewing the pleadings.

At the hearing, regarding sale free and clear of liens, MetLife and Summit stated xxxxxxxxxxxxxxxxxxxxx.

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 it provides further funds for paying down the secured claims of MetLife and Summit. The proposed sale is part of Debtor in Possession's good faith effort to prosecute this case by liquidating various real property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the sale is scheduled to close on August 1, 2018, within two weeks after the hearing.

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

The court shall issue 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 Jeffery Arambel, Debtor in Possession, ("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 Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Ty Angle or nominee ("Buyer"), the Property commonly known as Ellery Ranch, comprising approximately 40.05 acres of almond orchards on Grayson Road at State Highway 33 near Patterson, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $960,750.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 457, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

~~C. The Property is sold free and clear of the lien of Metropolitan Life Insurance Co. and SBN V Ag I LLC, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order, pending further order of the court.~~

D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

13. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO SELL FREE AND CLEAR OF LIENS**
MF-25 **Reno Fernandez** **6-28-18 [459]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Maring Ranch, comprising approximately 50.05 acres of almond orchards on Howard Road at State Highway 33 near Patterson, California ("Property").

The proposed purchaser of the Property is Ty Angle ("Buyer"), and the terms of the sale are:

A. Purchase price of $1,225,500.00;

B. Sale subject to closing of sales for Ellery Ranch and Grayson Ranch;

C. Deposit from Buyer of $50,000.00;

D. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 2% of the gross purchase price to be split between buyer and seller;

E. No broker's commission;

F. Sale of Property "as is," "where is," and "with all faults;"

G. Due diligence period to expire on July 1, 2018, with escrow to close on August 1, 2018; and

H. Sale includes any crop grown in 2018 and its proceeds.

The Motion seeks to sell the Property free and clear of the liens of Metropolitan Life Insurance Co. and SBN V Ag I LLC ("Creditors"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that both creditors are *likely* to consent to the sale, but that consent was not presented to the court when this matter was reviewed for hearing.

Movant estimates that along with other pending sales, net proceeds will satisfy MetLife's claim and will substantially reduce Summit's claim.

At the hearing, regarding sale free and clear of liens, MetLife and Summit stated **xxxxxxxxxxxxxxxxxxxxxx**.

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 it provides further funds for paying down the secured claims of MetLife and Summit. The proposed sale is part of Debtor in Possession's good faith effort to prosecute this case by liquidating various real property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the sale is scheduled to close on August 1, 2018, within two weeks after the hearing.

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

The court shall issue 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 Jeffery Arambel, Debtor in Possession, ("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 Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Ty Angle or nominee ("Buyer"), the Property commonly known as Maring Ranch, comprising approximately 50.05 acres of almond orchards on Howard Road at State Highway 33 near Patterson, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $1,225,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 464, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

~~C. The Property is sold free and clear of the lien of Metropolitan Life Insurance Co. and SBN V Ag I LLC, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~

D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

14. 18-90029-E-11 JEFFERY ARAMBEL
MF-26 Reno Fernandez

MOTION TO SELL FREE AND CLEAR OF LIENS
6-28-18 [466]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Jeffery Arambel, Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Grayson Ranch, comprising approximately 143.95 acres of peach orchards on the northeast corner of River Road and Stakes Street near Grayson, California ("Property").

The proposed purchaser of the Property is Ty Angle ("Buyer"), and the terms of the sale are:

A. Purchase price of $3,238,875.00;

B. Sale subject to closing of sales for Ellery Ranch and Maring Ranch;

C. Deposit from Buyer of $100,000.00;

D. Escrow fees, recording fees, transfer taxes, and other closing costs not to exceed 2% of the gross purchase price to be split between buyer and seller;

E. No broker's commission;

F. Sale of Property "as is," "where is," and "with all faults;"

G. Due diligence period to expire on July 1, 2018, with escrow to close on August 1, 2018; and

H. Sale includes any crop grown in 2018 and its proceeds.

The Motion seeks to sell the Property free and clear of the liens of Metropolitan Life Insurance Co. and SBN V Ag I LLC ("Creditors"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that both creditors are *likely* to consent to the sale, but such consent had not bee presented to the court as of the time the court reviewed the pleadings.

Movant estimates that along with other pending sales, net proceeds will satisfy MetLife's claim and will substantially reduce Summit's claim.

At the hearing, regarding sale free and clear of liens, MetLife and Summit stated **xxxxxxxxxxxxxxxxxxxxxx**.

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 it provides further funds for paying down the secured claims of MetLife and Summit. The proposed sale is part of Debtor in Possession's good faith effort to prosecute this case by liquidating various real property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the sale is scheduled to close on August 1, 2018, within two weeks after the hearing.

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

The court shall issue 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 Jeffery Arambel, Debtor in Possession, ("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 Jeffery Arambel, Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Ty Angle or nominee ("Buyer"), the Property commonly known as Grayson Ranch, comprising approximately 143.95 acres of peach orchards on the northeast corner of River Road and Stakes Street near Grayson, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $3,238,875.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 471, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

~~C. The Property is sold free and clear of the lien of Metropolitan Life Insurance Co. and SBN V Ag I LLC, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the liens of such creditors attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.~~

D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

15.	**18-90030-E-11** **STJ-7**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**CONTINUED MOTION TO APPROVE SALE AGREEMENT AND BIDDING PROCEDURES** **6-21-18 [188]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Approve Sale Agreement Break-Up Fee and Bidding Procedures for sale of the approximately 97 acres of largely unimproved real property (the "Filbin Property") located adjacent to the Ingram Creek Road exit from Interstate 5 in the area of Westley, California is xxxxxxxxxx.

The Bankruptcy Code permits Filbin Land & Cattle, Co., Inc., Debtor in Possession, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. The Movant has filed a Motion to Sell the real property commonly identified as 10 acres of the approximately 97 acres of largely unimproved real property (the "Filbin Property") located adjacent to the Ingram Creek Road exit from Interstate 5 in the area of Westley, California to Boyette Petroleum for *approximately* $2,500,000.00. DCN: STJ-8. The hearing on that Motion is also set for July 19, 2018.

Review of Sales Agreement For Which Bidding Procedure is Requested

The Sales Agreement with Boyette Petroleum is filed as Exhibit B in support of the Motion to Sell (DCN: STJ-8). Dckt. 192. The basic terms of the Agreement are:

A. The seller of the property is "Filbin Land & Cattle Co., Inc. Exhibit B, Dckt. 192 at 6 (the reference is the page number of the exhibit document, not the Agreement, as the Agreement pages are not numbered). The Agreement is signed by Jeffery Arambel, as President, of "Filbin Land & Cattle Co., Inc., a California Corporation. *Id.*, p. 14

B. The buyer is identified as "Stan Boyett & Sons, Inc, a California corporation and B & W Petroleum, a California general partnership, their successors or assignees (co1lectively, "Buyer").

At this point the court makes two observations. The seller purports to be the corporate Debtor, not the Debtor in Possession. At this juncture all of the property at issue is property of the bankruptcy estate in this case. 11 U.S.C. § 541(a). For a Chapter 11 estate, the trustee, or if a trustee is not appointed, the debtor in possession exercising the powers of a trustee has control of all property of the bankruptcy estate. 11 U.S.C. §§ 1106, 1107.

Under the contract, the buyer is not an entity known as Boyette Petroleum (the court cannot find an assignment of the Agreement to "Boyette Petroleum" with the Motion to Sell), but two other entities.

At this juncture, there is no agreement subject to 11 U.S.C. § 363 for the court to approve the sale of property of the bankruptcy estate. The Debtor corporate sell does not have the rights and interests.

One may argue, "debtor, debtor in possession, it doesn't matter." If it didn't matter, then Congress would not have created a debtor in possession to exercise the powers of a trustee and be the fiduciary to the bankruptcy estate.

C. The parties elect that adjudication of disputes concerning the Agreement is to be limited to the state court in Mariposa County, California. *Id.*, ¶ 11.J at 13. The bankruptcy court generally does not waive the exercise of its jurisdiction concerning property of the bankruptcy estate and orders authorizing such sales.

D. The sale includes personal property including equipment, machinery, supplies, hoses, and other tangible personal property on the real property. *Id.* ¶ 1.B., at 6. The Agreement says that an Exhibit C to the Agreement identifies the personal property on a bill of sale. Exhibit C is a blank bill of sale with no personal property identified.

E. The purchase price is $2,560,000. *Id.*, ¶ 2, at 6. The agreement includes the purchase of additional adjoining property for the additional payment of $100,000 for each .5 acres p to not more than 11.5 acres in total. *Id.*

F. Upon the buyer completing the due diligence review, $100,000 will be deposited into escrow, and be refundable until closing. *Id.*, ¶ 4, at 7.

G. Closing costs include buyer paying the Crestmont Development, LLC management fee of $135,000. *Id.* ¶ 4(C) at 7.

H. Break-up fee is $135,000. *Id.*, ¶ 4(F) at 8.

I. The seller warrants that it is a corporation duly organized and existing under the laws of the State of California. *Id.*, ¶ 5Bi at 8.

J. Seller further warrants that no further authorizations are required and the sale is duly authorized. *Id.*, ¶ 5Bii at 8.

K. The Agreement provides that the rights thereunder are not assignable without the written authorization of the other party. *Id.*, ¶ 11.F at 13.

This Motion requests that the court approve and authorize the break-up fee, and set the following procedure for any overbidders:

A. Terms of overbids all cash, on substantially the same terms as Boyette Petroleum, with $100,000 good faith deposit not later than August 15, 2018..

B. First overbid not less than $2,700,000.

The Motion, in its prayer, appears to want to go further and have the court "approve" the sales agreement that is the subject of the Motion for Authorization to Sell the Property. The court is unsure how it can "approve" a contract for the sale of the Property and then conduct an open and fair auction of the Property. The court declines the opportunity to pre-approve a sale which is to be approved at the hearing on another motion to authorize the sale on the terms of the pre-approved contract to be approved.

At the hearing **xxxxxxxxxxxxxxxxxxxxxx**

The Motion is **xxxxxxxxxxx**.

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 Sales Agreement and Bidding Procedures filed by Filbin Land & Cattle Co., Inc., Debtor in Possession, ("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 **xxxxxxx**.

16.	**18-90030-E-11** **STJ-8**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS** **6-21-18 [194]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is xxxxxxxx.

The Bankruptcy Code permits Filbin Land & Cattle Co., Inc., as the Debtor in Possession, ("Movant" or "Seller") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant seeks authorization to sell approximately ten acres of real property located at 4501, 4502, 4549, 4557, and 4561 Ingram Creek Road, Westley, California ("Property").

The proposed purchaser of the Property is Boyette Petroleum ("Buyer"), and the terms of the sale as stated in the Motion are:

a. The purchase price for Property shall be$2,565,000.00 and payable by Buyer to Seller in readily available funds at closing.

b. Purchase price to be increased by $100,000.00 for every 0.5 acres added to Property adjacent to Ingram Creek Road in excess of the contemplated 10 acres up to 11.6 acres.

c. Property contains a gas station facility, restaurant, graded areas, water well, and surrounding area adjacent to Interstate 5 and Ingram Creek Road. The exact boundaries of Property shall be mutually agreed to by Seller and Buyer.

d. Property will be transferred to Buyer free and clear of all mortgages, liens, encumbrances, claims, conditions and restrictions.

Review of Sale Agreement, Identification of Parties to the Contract, and Terms

The Sales Agreement with Boyette Petroleum is filed as Exhibit B in support of the Motion to Sell (DCN: STJ-8). Dckt. 192. The basic terms of the Agreement are:

A. The seller of the property is "Filbin Land & Cattle Co., Inc. Exhibit B, Dckt. 192 at 6 (the reference is the page number of the exhibit document, not the Agreement, as the Agreement pages are not numbered). The Agreement is signed by Jeffery Arambel, as President, of "Filbin Land & Cattle Co., Inc., a California Corporation. *Id.*, p. 14

B. The buyer is identified as "Stan Boyett & Sons, Inc, a California corporation and B & W Petroleum, a California general partnership, their successors or assignees (co1lectively, "Buyer").

At this point the court makes two observations. The seller purports to be the corporate Debtor, not the Debtor in Possession. At this juncture all of the property at issue is property of the bankruptcy estate in this case. 11 U.S.C. § 541(a). For a Chapter 11 estate, the trustee, or if a trustee is not appointed, the debtor in possession exercising the powers of a trustee has control of all property of the bankruptcy estate. 11 U.S.C. §§ 1106, 1107.

Under the contract, the buyer is not an entity known as Boyette Petroleum (the court cannot find an assignment of the Agreement to "Boyette Petroleum" with the Motion to Sell), but two other entities.

At this juncture, there is no agreement subject to 11 U.S.C. § 363 for the court to approve the sale of property of the bankruptcy estate. The Debtor corporate sell does not have the rights and interests.

One may argue, "debtor, debtor in possession, it doesn't matter." If it didn't matter, then Congress would not have created a debtor in possession to exercise the powers of a trustee and be the fiduciary to the bankruptcy estate.

C. The parties elect that adjudication of disputes concerning the Agreement is to be limited to the state court in Mariposa County, California. *Id.*, ¶ 11.J at 13. The bankruptcy court generally does not waive the exercise of its jurisdiction concerning property of the bankruptcy estate and orders authorizing such sales.

D. The sale includes personal property including equipment, machinery, supplies, hoses, and other tangible personal property on the real property. *Id.* ¶ 1.B., at 6. The Agreement says that an Exhibit C to the Agreement identifies the personal property on a bill of sale. Exhibit C is a blank bill of sale with no personal property identified.

E. The purchase price is $2,560,000. *Id.*, ¶ 2, at 6. The agreement includes the purchase of additional adjoining property for the additional payment of $100,000 for each .5 acres p to not more than 11.5 acres in total. *Id.*

F. Upon the buyer completing the due diligence review, $100,000 will be deposited into escrow, and be refundable until closing. *Id.*, ¶ 4, at 7.

G. Closing costs include buyer paying the Crestmont Development, LLC management fee of $135,000. *Id.* ¶ 4(C) at 7.

H. Break-up fee is $135,000. *Id.*, ¶ 4(F) at 8.

I. The seller warrants that it is a corporation duly organized and existing under the laws of the State of California. *Id.*, ¶ 5Bi at 8.

J. Seller further warrants that no further authorizations are required and the sale is duly authorized. *Id.*, ¶ 5Bii at 8.

K. The Agreement provides that the rights thereunder are not assignable without the written authorization of the other party. *Id.*, ¶ 11.F at 13.

Request For Sale Free and Clear

The Motion seeks to sell the Property free and clear of the following twelve specifically-identified liens:

- The Tax Collector of Stanislaus County;
- Dorothy Arnaud (individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA dated December 30, 1973);

- Helen Jacobson (individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA dated December 30, 1973);
- Garry DeWolf (individually, and as Trustee of the Estate of Jeanette DeWolf);
- Mary Etta Filbin (for the interest of Edward J. Filbin);
- James Filbin;
- Thomas Filbin;
- Fuel Source, Inc.;
- DK Stephens Enterprises; Precision Diesel; Rocky Fillippini; and
- Mark Potter on behalf of the Center for Disability.

For an order purporting to sell free and clear of a creditor's lien, that creditor must have received notice of the hearing on the motion to sell free and clear of liens. For this matter, the court has reviewed the proof of service for the Motion and confirms that all twelve creditors have been notified that a pending sale proposes to sell free and clear of their liens. None of those parties responded to this Motion.

The Motion states the following grounds upon which the requested relief for a sale free and clear is based:

"9. The statutory basis for this Motion is Section 363(f) of the Bankruptcy Code."

Motion ¶ 9, Dckt. 194. No other grounds are stated for the relief requested.

In the prayer, the request for relief appears to be expanded, Movant seeking that the order be:

> 2. Approving and authorizing the Sale Property to be transferred to the buyer (Boyette or an overbidder) free and clear of all rights, claims, liens, leases and interests, specifically including the rights of all of the Respondents, such rights, claims, liens, leases and interests to re-attach to the proceeds of sale with the same nature, extent and validity as they had against the Sale Property"

Thus, this appears to request that the property be sold free and clear of liens and interests of person who were not provided notice of the motion, given notice that the Debtor in Possession was seeking to sell property free and clear of that person's property rights, or notice of the asserted legal basis as to why such sale could be ordered by the court.

Though not stated with particularity in the Motion, grounds are stated in the Points and Authorities, Dckt. 196. These are:

> "With respect to each creditor asserting a lien, claim, encumbrance, or interest, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. **Those** holders of liens, claims, encumbrances, or interests **who did not object** or who withdraw their objections to the sale or the Motion **can be deemed to have consented to the Motion and sale pursuant to section 363(f)(2)** of the Bankruptcy Code. Those holders of liens, claims, encumbrances, or interests who do object fall within one or more of the other subsections of Bankruptcy Code Section 363(f)."

Points and Authorities, p. 6:1-6; Dckt. 196 (emphasis added). No legal authority is cited for the proposition that silence is consent to the loss of the rights in the property.

The court notes that Congress uses the word "consent" in the context of the use and sale of property of the estate in 11 U.S.C. § 363(c)(2) [emphasis added] concerning cash collateral, stating:

> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless–
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) **the court**, after notice and a hearing, **authorizes** such use, sale, or lease in accordance with the provisions of this section.

For purposes of 11 U.S.C. § 363(c)(2) the court merely authorizing the sale because it is not opposed is something different than **consent**. The court did not find Ninth Circuit Court of Appeal decisions addressing consent under 11 U.S.C. § 363(f)(2), however, in connection with interpreting the Commercial Code and contract law, the Circuit has stated:

> "In its ordinary meaning, a 'contract' is a legally enforceable bargain, formed by mutual consent and supported by consideration."). HN7 The mutual intention to be bound by an agreement is the sine qua non of legally enforceable contracts and recognition of this requirement is nearly universal. See Restatement (Second) of Contracts §§ 2, 17; Cal. Juris. 3d Contracts § 67 (HN8 "Mutual consent for a contract is determined under an objective standard applied to the outward manifestations or expressions of the parties . . . ."). . .
> . . .
> Thus, under federal common law—or, indeed, under any law of which we are aware—where the parties to a "contract" have not mutually consented to be bound by their agreement, they have not formed a true contract. "[M]utual consent is gathered from the reasonable meaning of the words and acts of the parties, and not from their unexpressed intentions or understanding." *Reigelsperger v. Siller*, 40 Cal. 4th 574, 53 Cal. Rptr. 3d 887, 150 P.3d 764, 767 (Cal. 2007) (internal quotation marks omitted); accord Restatement (Second) of Contracts § 2 cmt. b ("The phrase 'manifestation of intention' [or consent] adopts an external or objective standard for

> interpreting conduct; it means the external expression of intention as distinguished from undisclosed intention.").”

Casa Del Caffe Vergunano S.P.A. v. Italflavors San Diego, LLC, 816 F.3d 1208, 1212 (9th Cir. 2016).

Next, it is asserted that the sale may be free and clear of liens based on 11 U.S.C. § 363(f)(3) as follows:

> “First, the lien claims asserted by the Tax Collector and the Filbin Creditors may be subject to Section 363(f)(3), which applies **if the price at which such property is to be sold is greater than the aggregate value of all liens on such property**. Here, the liens encumber all of the Filbin Property, the Sale Property consists of only about 11% of the aggregate, but the Sale Price ($2.5 million) approximates the aggregate lien obligation (less than $2.7 million). **Any portion of the Filbin Debt which is not paid from the sale proceeds will be amply secured by the remaining real property collateral.** The objective of Section 363(f)(3) is therefore met here.”

Id., p. 6:7-13 (emphasis added). No authority is cited for this argument.

For the third argument, the Debtor in Possession cites the court to *Pinnacle Res. At big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 862 F.3d 1148, 1157 (9th Cir. 2018)for the proposition that if the rights could be foreclosed on, they can be sold free and clear of under applicable non-bankruptcy law.

> “Second, as recently interpreted by the Ninth Circuit, applicable **non-bankruptcy law permits** the sale of the Sale Property free and clear of all liens, claims, leases, encumbrances, and interests, **because all such rights could be eliminated in a foreclosure sale**. Specifically, the Ninth Circuit reasoned that a sale free and clear of a lease would divest the tenant of any right to continued occupancy, explaining that **“we see no reason to exclude the law governing foreclosure sales from the analogous language in section 363(f)(1)”** and reasoning that the statute evinced a “clear intent to protect lessees' rights outside of bankruptcy, not an intent to enhance them.” *Pinnacle Res. At Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 862 F.3d. 1148, 1157 (9th Cir. 2017) (“Spanish Peaks”). Since the rights of a tenant – and all the other rights and interests of the Respondents – could be divested through a foreclosure sale, they can be the subject of a sale free and clear under Section 363(f)(1). And see, *Precision Indus. v. Qualitech Steel SBQ, LLC* 327 F.3d. 537 (7th Cir. 2003) (approving sale free and clear of lease).”

Id., p. 6 at 14-25 (emphasis added). The court notes that the cited opinion has been amended, *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017). It does not appear that the changes are with respect to the sections relied upon by Movant.

On its face, it appears that Movant's contention is that so long as whatever interest is at issue could be foreclosed out under applicable non-bankruptcy law, then the sale may be approved pursuant to 11 U.S.C. § 362(f)(1). Thus, it appears that such a rule could render all of the other 11 U.S.C. § 363(f) grounds mere surplusage.

In Spanish Peaks, the Ninth Circuit was addressing the effect of a lease on the property being sold, when the trustee had not rejected the lease pursuant to 11 U.S.C. § 365. Specifically, the panel stated:

> "Under Montana law, a foreclosure sale to satisfy a mortgage terminates a subsequent lease on the mortgaged property. *See Ruby Valley Nat'l Bank v. Wells Fargo Delaware Trust Co.*, 2014 MT 16, 373 Mont. 374, 317 P.3d 174, 178 (Mont. 2014); Williard v. Campbell, 91 Mont. 493, 11 P.2d 782, 787 (Mont. 1932). SPH's bankruptcy proceeded, practically speaking, like a foreclosure sale—hardly surprising since its largest creditor was the holder of the note and mortgage on the property. Indeed, had SPH not declared bankruptcy, we can confidently say that there would have been an actual foreclosure sale. Such a sale would have terminated the Pinnacle and Opticom leases. Section 363(f)(1) does not require an actual or anticipated foreclosure sale. It is satisfied if such a sale would be legally permissible."

Id., 900.

In so concluding, the Ninth Circuit panel noted that the mandatory provisions of 11 U.S.C. § 363(e) requires the providing adequate protection to anyone for their interest in property being used or sold - if such adequate protection is requested. *Id.*, 1156. Such adequate protection requires that the "indubitable equivalent" be provided to such creditor.

Thus, this ground appears to be one in which the sale could be ordered for all liens and encumbrances that could be foreclosed upon, with the effected creditor being entitled to the "indubitable equivalent" of its lien position. With the bankruptcy case filed, the Ninth Circuit Court of Appeals treats the trustee, debtor in possession, or Chapter 13 debtor as the ultimate foreclosing creditor for purposes of 11 U.S.C. § 363(f)(1).

The final ground is one in which a creditor could be compelled to accept a money satisfaction. 11 U.S.C. § 363(f)(5). It is asserted that notwithstanding the more restrictive reading of this provision by the Bankruptcy Appellate Panel in *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 46, 43 (BAP 9th Cir. 2008), it is asserted that *Clear Channel* does not survive the decision in *Spanish Peaks*. Spanish Peaks does not address what Congress intended in this provision and whether it means a creditor can be compelled to take nothing when it could be compelled to release its lien if the debt is paid. Though Spanish Peaks appears to subsume all other possible grounds under 11 U.S.C. § 363(f), that does not mean that it amends the plain language of 11 U.S.C. § 363(f)(5) stating that if the creditor can be compelled to take money, the court can order the sale free and clear to force the release of a lien.

There is at least one of the grounds which applies, that being 11 U.S.C. § 363(f)(1).

DISCUSSION

At the hearing, the Debtor in Possession addressed the issues relating to who the contracting parties are for the Sale Agreement, asserting **xxxxxxxxxxxxxxxxxxxxxxxxxxx**

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 the purchase price is a fair and appropriate one, and closing a sale on this basis would benefit the creditors substantially.

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 Filbin Land & Cattle Co., Inc., Debtor in Possession, Debtor in Possession, ("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 Filbin Land & Cattle Co., Inc., Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b), (f)(1), (f)(3), and (f)(5)to Boyette Petroleum or nominee ("Buyer"), the Property commonly known as approximately 10 acres of real property located at 4501, 4502, 4549, 4557, and 4561 Ingram Creek Road, Westley, California ("Property"), on the following terms:
>
> A. ~~The Property shall be sold to Buyer for $2,565,000.00, on the terms and conditions set forth in the Purchase and Sale Agreement, Exhibit B, Dckt. 192, and as further provided in this Order.~~
>
> ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
>
> ~~C. The Property is sold free and clear of the liens of the Tax Collector of Stanislaus County; Dorothy Arnaud (individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA dated December 30, 1973); Helen Jacobson (individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA dated December 30, 1973); Garry DeWolf (individually,~~

~~and as Trustee of the Estate of Jeanette DeWolf); Mary Etta Filbin (for the interest of Edward J. Filbin); James Filbin; Thomas Filbin; Fuel Source, Inc.; DK Stephens Enterprises; Precision Diesel; Rocky Fillippini; and Mark Potter on behalf of the Center for Disability, pursuant to 11 U.S.C. § 363(f)(3) and (f)(5) with the liens of such creditor attaching to the proceeds. Debtor in Possession shall hold the sale proceeds, after payment of the closing costs, other secured claims, and amount provided in this order, pending further order of the court.~~

~~D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~

17. 18-90030-E-11 FILBIN LAND & CATTLE CO., INC.
Michael St. James

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

Debtor's Atty: Matthew J. Olson; Michael St. James

Notes:
Continued from 6/28/18 to 7/12/18. Rescheduled due to conflict with Debtor's counsel to 7/19/18. Specially set to be heard in conjunction with the pending motion to sell property of the estate.

18. **17-22347-E-11** **UNITED CHARTER LLC** **CONTINUED MOTION TO USE CASH COLLATERAL**
JJG-7 **Jeffrey Goodrich** **3-8-18 [193]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Authority to Use Cash Collateral is denied without prejudice.

United Charter LLC ("Debtor in Possession") moves for an order approving the use of cash collateral from Debtor in Possession's real property. Debtor in Possession does not request a specific period of time for its cash collateral request. Instead, Debtor in Possession refers to "the three-month period between the date of hearing on this motion and the date the DIP expects to have a confirmation hearing on its plan of reorganization." Dckt. 193 at 3:9–11. No confirmation hearing has been set.

Debtor in Possession's proposed budget includes the following expenses:

Expense Name	Amount
Cal Water	$118
PGE	$250

Insurance	$2,560.41
Maintenance	$200
Bay Alarm	$103
Contingency	$500
FTB	$76.84
Accounting	$1,200
Real Estate Leasing Commission (one-time payment)	$19,122.88
Real Estate Property Taxes (one-time payment)	$53,435.00
Total	**$77,566.13**

MARCH 22, 2018 HEARING

At the hearing, Debtor in Possession requested that the hearing be continued to allow Debtor in Possession and East West Bank to complete discussions for a stipulation to use cash collateral. Dckt. 204. Creditor East West Bank concurred in requesting a continuance. The court continued the hearing to 10:30 a.m. on April 5, 2018. Dckt. 206.

APRIL 5, 2018 HEARING

At the hearing, East West Bank confirmed its consent to the use of cash collateral, that consent being documented in the Non-Opposition filed on April 4, 2018 (Dckt. 216). A condition of the Non-Opposition agreed to by Debtor in Possession and ordered by the court is the granting of a replacement lien for East West Bank to the extent that its collateral position is diminished by the use of cash collateral.

The court noted that East West Bank is the only creditor filing a claim in this case, other than the Internal Revenue Service for a $100 general unsecured claim.

The court granted the Motion, with the use of cash collateral as stated authorized through July 31, 2018, and East West Bank being granted a replacement lien in post-petition collateral of the same nature and type in which it holds its existing lien. Dckt. 219.

The court continued the hearing to 10:30 a.m. on July 19, 2018, for the presentation of any supplemental request for further authorization to use cash collateral. Dckt. 225.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has not filed any supplemental pleadings indicating whether or not it seeks authority to continue using cash collateral. The lack of any additional pleadings indicates to the court that Debtor in Possession does not seek further authorization to use cash collateral. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by United Charter LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

19. 17-22347-E-11 UNITED CHARTER LLC
Jeffrey Goodrich

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-7-17 [1]

Debtor's Atty: Jeffrey J. Goodrich

Notes:
Continued from 4/5/18

Operating Reports filed: 5/26/18 [Mar], 5/26/18 [Apr]

Debtor's First Amended Plan of Reorganization filed 5/3/18 [Dckt 232]

Disclosure Statement for Debtor's Plan of Reorganization filed 5/3/18 [Dckt 232]; Order approving disclosure statement filed 5/10/18 [Dckt 237], set for hearing 7/19/18 at 11:30 a.m.

20. 16-27854-E-11 GARY STEINGROOT
UST-1 Stephan Brown

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
6-1-18 [178]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, and parties requesting special notice on June 1, 2018. By the court's calculation, 48 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is denied without prejudice.

This Motion to Convert the Chapter 11 bankruptcy case of Gary Steingroot ("Debtor in Possession") has been filed by the United States Trustee ("Movant"). Movant asserts that the case should be dismissed or converted because Debtor in Possession is time-barred under 11 U.S.C. § 1129(e) from confirming the pending amended plan and because the automatic stay has been lifted as to Debtor in Possession's real property.

Movant argues that September 25, 2017, was the three-hundredth day post-petition and was the last day that Debtor in Possession could file a plan and comply with 11 U.S.C. § 1121(e)(2). An Amended Plan was filed on September 14, 2017, and Movant concurs that the 300-day deadline was satisfied.

Movant argues, however, that October 30, 2017, was the forty-sixth day following filing of the Amended Plan and was the last day that Debtor in Possession could confirm the plan and comply with 11 U.S.C. § 1129(e) without obtaining an extension of the deadline.

The court entered an order on October 26, 2017, setting a confirmation hearing on December 19, 2017. Dckt. 119. Then, on December 21, 2017, the court entered an order continuing the hearing to 11:30 a.m. on January 17, 2018, which was amended by an order on December 27, 2017, setting the matter for hearing at 2:00 p.m. on January 17, 2018. Dckt. 163, 164.

Where Movant places the brunt of its argument is at what happened next in the case. Movant argues that after the January 17, 2018 hearing there is no conceivable order extending the confirmation deadline, merely civil minutes indicating a continued hearing. *See* Dckt. 167. Because of there being no order, Movant argues that Debtor in Possession cannot confirm a plan in line with 11 U.S.C. § 1129(e).

Additionally, Movant argues that cause exists to dismiss or convert this case because the court's order entered on December 11, 2017, stated that the automatic stay would be lifted for Citizens Bank, N.A. FKA RBS Citizens, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed recorded against Debtor in Possession's property effective July 1, 2018. *See* Dckt. 147.

In the Memorandum of Points and Authorities filed with the Motion, Movant indicates that conversion may be better for creditors in this case because there is over $50,000.00 in cash to be distributed. Dckt. 180 at 5.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on July 5, 2018. Dckt. 199. Debtor in Possession argues that grounds have not been shown that favor converting or dismissing this case. Debtor in Possession stresses that Movant did not oppose the prior continuances of the confirmation hearing (in fact, did not even appear at the hearings).

Debtor in Possession also notes that the main and only piece of real property was authorized by the court to be sold on June 28, 2018, and the property was sold on June 29, 2018, with escrow closed. *Id.* at 2.

Debtor in Possession focuses on the lack of a written order continuing the confirmation hearing in January 2018 and argues that "entry of an order is not always necessary to effectuate it, particularly when the parties had notice of the oral order." *Id.* at 3–4 (quoting *Rodarte v. Estates at Monarch Cmty. Assoc. (In re Rodarte)*, No. CC-12-1276-HKiD, 2012 WL 6052046 (B.A.P. 9th Cir. Dec. 6, 2012) (citing *Noli v. Comm'r of Internal Revenue*, 860 F.2d 1521, 1525 (9th Cir. 1988); *Am.'s Servicing Co. v. Schwartz-Tallard*, 438 B.R. 313, 318 (D. Nev. 2010))). Debtor in Possession argues that the court's implicit oral order arising from the January 17, 2018 civil minutes is that the confirmation deadlines were extended.

Debtor in Possession argues that there is a reasonable likelihood of rehabilitation in this case because the court approved the sale of Debtor in Possession's real property, and that sale has closed, preventing any diminution in value from the automatic stay being lifted. Debtor in Possession believes that the proposed amended plan can be confirmed on July 11, 2018.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

The plain language of 11 U.S.C. § 1129(e) indicates that neither dismissal nor conversion is mandatory once the deadline has passed. *See In re Simbaki, Ltd.*, 522 B.R. 917 (Bankr. S.D. Tex. 2014). In this instance, it appears that Movant is asserting to the court that as soon as the deadline and as soon as there is no written order continuing a confirmation hearing then the court *must* dismiss or convert the case.

As just one quick example that the court found about the effect of oral orders, the court points to a Fifth Circuit decision affirming that criminal contempt sanctions could be issued for violating a bankruptcy court's oral order. *Ingalls v. Thompson (In re Bradley)*, 588 F.3d 254, 264 (5th Cir. 2009). The Fifth Circuit found support in its prior rulings and from the Sixth Circuit and was not moved by arguments that a later-issued written order used different (more specific) language. *Id.* The Fifth Circuit declared that an oral order was clear enough to provide notice to the parties. *Id.*

If Movant really wants to press its argument that the court's instruction at the January 17, 2018 hearing that the matter was continued, then perhaps the court should order that Movant provide supplemental pleadings explaining to the court how its oral orders have no effect.

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is denied without prejudice.

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 the Chapter 11 case filed by the United States 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 to Convert is denied without prejudice.

21. **10-32967-E-7** **GINA COOPER** **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
DPR-2 **David Ritzinger** **6-1-18 [222]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 Respondents, Chapter 7 Trustee, and Office of the United States Trustee on June 1, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions for Violation of the Discharge Injunction 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 Sanctions for Violation of the Discharge Injunction is denied.

Gina Cooper, the Chapter 7 Debtor, received her discharge in this bankruptcy case on August 26, 2010. Discharge Order, Dckt. 53. From the court's review of the Docket, several contested matters were prosecuted by Debtor and the Chapter 7 Trustee after the entry of the discharge concerning the Estate's asserted interests in a limited partnership as property of the Chapter 7 Bankruptcy Estate. Those disputes were ultimately resolved by a Stipulation between the Chapter 7 Trustee (represented by J. Russell Cunningham), Debtor (represented by Mary Ellen Terranella, Esq.), and Orchard Crossing Apartments, LP (the limited partnership) and Orchard Crossing Apartments, Inc. (the general partner) (represented by Pamela Jackson, Esq.). Settlement Agreement, Exhibit A; Dckt. 148. Debtor's Chapter 7 case was closed on August 5. 2013.

On April 30, 2018, this bankruptcy case was reopened at the request of Debtor. Order, Dckt. 196. That same day, Debtor filed a motion to have Mary Ellen Terranella, Esq., Terry A. Duree, Esq., and Bret A. Yaple, Esq., and each of them held in contempt for violation of the discharge injunction. Dckt. 197. The allegations upon which the asserted violation of the discharge injunction was based then (and also now) center on state court litigation commenced by Mary Ellen Terranella, as the plaintiff, represented by Messrs. Duree and Yaple, asserting rights for payment of attorney's fees for legal services rendered in connection with the bankruptcy case. The state court action asserts claims based on contract and "common counts" (which are not specified) in the state court complaint.

The Memorandum of Points and Authorities filed by Debtor in support of this Motion provides various statutory and case law authorities relating to the discharge injunction and violation thereof. Dckt. 228.

POST-DISCHARGE CHAPTER 7 BANKRUPTCY CASE PROCEEDINGS
Motion to Compel Abandonment
(Commenced by Debtor, represented by Mary Ellen Terranella)
and
Motion for Turnover
(Commenced by Chapter 7 Trustee, represented by J. Russell Cunningham)

The post-discharge litigation shown on the Docket in the Chapter 7 Bankruptcy Case tells an active story of proceedings in this case.

On July 3, 2010 (one month before the discharge was entered), Debtor filed a Motion to Compel the Chapter 7 Trustee to abandon "said property of the bankruptcy estate," which is described in the Motion as:

> Debtor disclosed in Schedule A real property located at 7025 Pleasant Hills Ranch Road, Vacaville, CA. and at 651 E. Travis Boulevard, which property is owned by Orchard Crossing Apartments, LP of which debtor is a 99.998% owner, and 420 Trotter, Vallejo, CA, which debtor quitclaimed off title pursuant to a marital property settlement agreement, but listed as she is still on both the first and second notes and deeds of trust. Debtor disclosed in Schedule B and amended Schedule B personal property including bank accounts at Bank of America and Wells Fargo Bank, household goods, clothing, jewelry, the ownership interest in Orchard Crossing, LP, an uncollectible receivable from RTI Investments, which debtor does not exempt, a 2006 Range Rover, a 2005 Mercedes Benz SL 5OO, a 2002 Mercedes Benz S5OO, a tractor, 6 dogs, post petition earnings, to the extent they are deemed "distributions", and a burial plot.

Motion to Compel ¶ 2, Dckt. 17. The attorney for Debtor for the Motion to Compel is Mary Ellen Terranella. Debtor's Declaration in Support of the Motion (Dckt. 19) lists Ms. Terranella as counsel for Debtor.

The Chapter 7 Trustee filed an Opposition to the Motion to Compel. Dckt. 29.

On July 6, 2010, the Chapter 7 Trustee then filed a Motion For Turnover of Property of the Bankruptcy Estate—specifically Debtor's interest in the Orchard Crossing Apartments, LP, and the distributions made on such interests. Motion for Turnover, Dckt. 24. Debtor (represented by Mary Ellen Terranella) filed her Opposition (Dckt. 72), Declaration (Dckt. 74), and Exhibits (Dckt. 73) on September 28, 2010.

A Stipulation to Continue the hearing on the Motion to Compel (signed by J. Russell Cunningham as counsel for the Chapter 7 Trustee and Mary Ellen Terranella as counsel for Debtor) was filed on September 3, 2010, to continue the hearing on Debtor's Motion to Compel and a related motion (addressed below) by the Chapter 7 Trustee for turnover of property of the bankruptcy estate. Dckt. 55. The Stipulation states that the parties have previously continued the hearings for both motions to "accommodate appraisal and related discovery" for the two motions. Stipulation ¶ F, Dckt. F. Further, it states that the non-expert discovery for the two motions had been completed, with the expert discovery still pending. Stipulation ¶¶ G, H; *Id.*

On September 28, 2010, the Chapter 7 Trustee filed supplemental pleadings consisting of:

A. Twelve-page Supplemental Opposition (Dckt. 65)

B. Declaration of Appraiser (Dckt. 66)

C. Fifty-seven page appraisal report (Dckt. 67),

D. Trustee's Declaration (Dckt. 68).

E. One hundred eighty-two pages of exhibits (Dckts. 69, 70) in opposition to the Motion to Compel.

Additionally, on September 28, 2010, Orchard Crossing Apartments, LP filed its "Joinder" in Opposition to the Motion for Turnover. Dckt. 80. Counsel of record appearing for Orchard Crossing Apartments, LP for the Motion to Compel (Contested Matter) is Pamela Jackson.

In response to the Motion to Compel and the Motion for Turnover, the Redevelopment Agency of the City of Fairfield filed pleadings in the form of its Statement of Position with respect to the two Motions. Those consist of:

A. Statement of Position. Dckt. 76.

B. Declaration of Senior Housing Finance Project Manager. Dckt. 77.

C. Seventy-seven pages of exhibits. Dckt. 78.

On September 28, 2010, Debtor, represented by Mary Ellen Terranella, filed her Supplemental Opposition pleadings to the Motion to Compel and in Support of Motion to Abandon. Those Opposition pleadings are:

A. Declaration of Enrolled Agent licensed by the Internal Revenue Service Linda Feil. Dckt. 82.

B. Supplemental Declaration of Debtor. Dckt. 83.

C. Declaration of Appraiser Lee Bartholomew. Dckt. 84.

D. Declaration of Manager Romeo Dante Shaw. Dckt. 85.

E. Supplemental Points and Authorities. Dckt 86.

The Chapter 7 Trustee then filed his Reply Brief to the Opposition to Motion to Compel (Dckt. 93) and forty pages of exhibits (deposition transcripts) in reply (Dckt. 94).

Debtor, represented by Mary Ellen Terranella, then filed supplemental reply briefs, declarations, and exhibits, consisting of:

A. Reply to Supplemental Opposition to Motion to Compel Abandonment. Dckt. 97.

B. Supplemental Declaration of Debtor. Dckt. 98.

C. Supplemental Exhibits in Reply to Opposition to Motion to Compel. Dckts. 99, 100, 101.

The Chapter 7 Trustee, represented by J. Russell Cunningham, and Debtor, represented by Mary Ellen Terranella, executed Stipulations to continue the hearings on the two motions and consented to participate in the court's Bankruptcy Dispute Mediation Resolution Program (mediation). Dckt. 118, 122. The Chapter 7 Trustee and Debtor, each continuing to be represented by the same attorneys, filed their Disclosure of Expert Witness Statements for the two Motions. Dckt. 128, 130. The two Motions were set for evidentiary hearings.

Motion to Approve Compromise and Settlement

On May 24, 2011, the Chapter 7 Trustee, represented by J. Russell Cunningham, filed a Motion to Approve Compromise that resolved the Motion to Compel Abandonment, Motion for Turnover, and the Adversary Proceeding. Dckt. 145. The Settlement Agreement filed as Exhibit A in support of the Motion to Approve Compromise (Dckt. 145) provides that it is a dispute that was ultimately resolved by a Stipulation between:

A. Debtor (approved as to form by Mary Ellen Terranella, Esq., counsel for Debtor);

B. Orchard crossing Apartments, LP (the limited partnership) and Orchard Crossing Apartments, Inc., the general partner, (approved as to form by

Pamela Jackson, Esq., attorney for the limited partnership and corporation); and

C. The Chapter 7 Trustee (approved as to form by J. Russell Cunningham as attorney for the Trustee).

RESPONDENT'S OPPOSITION

Mary Ellen Terranella ("Respondent") filed an Opposition on July 5, 2018. Dckt. 231. Respondent argues that Motion incorrectly interprets the Ninth Circuit law allowing Respondent to seek payment of attorney's fees. Respondent quotes the Ninth Circuit for the provision that "the obligation to pay for post-petition legal services is not dischargeable." *Id.* at 4 (quoting *Sanchez v. Gordon (In re Sanchez)*, 241 F.3d 1148, 1150 (9th Cir. 2001) (citing *In re Hines*, 147 F.3d 1185 (9th Cir. 1998))). Respondent insists that she filed a state court action based upon that authority believing that such litigation would not violate Debtor's discharge because it sought compensation only for post-petition legal services.

Respondent argues that her fee agreement with Debtor authorized her to litigate contested matters in this Chapter 7 case, which incurred attorney's fees at a rate of $250.00 per hour. Respondent argues that the disclosures of compensation filed in this case fully disclose what she has incurred on behalf of Debtor.

Respondent cites to various cases for provisions that attorneys in Chapter 7 attorneys needed a judicially-created scheme/authority to collect for post-petition services and that attempting to collect those fees does not violate either the automatic stay or the discharge injunction. *See, e.g.*, *id.* at 8.

Respondent also notes that Debtor has conceded that Respondent has a valid claim, if only had been presented under a quantum meruit theory. Respondent contends that there is plenty of Ninth Circuit law allowing her to proceed on more than such a theory. She also maintains that she could proceed under California law on theories of open book account or account stated.

DEBTOR'S REPLY

Debtor filed a Reply on July 9, 2018. Dckt. 236. Debtor "does not dispute that [Respondent] has a right to pursue post-petition fees under proper legal proceedings"—*i.e.*, under a theory of quantum meruit. Debtor argues that Respondent may have ben negligent in reviewing the moving papers because Debtor does not see how Respondent's pleadings address the main issue of whether Debtor's obligation to pay was discharged.

Debtor admits that an attorney may collect attorney's fees after a petition is filed without violating the discharge injunction, but Debtor stresses that it was not the pre-petition fee agreement that created such right in this case but was the rendering of post-petition services. By that distinction, Debtor alleges that Respondent could only proceed by quantum meruit.

DISCUSSION

Both Debtor and Respondent agree that post-petition attorney's fees were incurred, and they both agree that Respondent would be entitled to payment of those fees. They disagree, however, about the method chosen to enforce the right to be paid those fees. Respondent contends that the right arises as part of the pre-petition fee agreement, and Debtor counters that the right to be paid arose not out of the agreement but out of actual performance of post-petition legal services.

In *Sanchez v. Gordon (In re Sanchez)*, the Ninth Circuit has clearly addressed these issues—in favor of Respondent. As a base, the Ninth Circuit held once again that "the obligation to pay for post-petition legal services is not dischargeable." 241 F.3d at 1150. The Ninth Circuit noted that the structure of providing for post-petition fees in Chapter 7 cases was a necessity to prevent the bankruptcy system from breaking. *Id.* Most important for this Motion, the Ninth Circuit noted that an "alternative ground for reaching the same holding would that a claim for post-petition legal services does not arise until the lawyer actually performs those services." *Id.*

The primary basis presented by the Ninth Circuit was one of a "legally enforceable right" to fees, with the alternative being one under which a claim arose once services were provided. Debtor appears to be arguing that the alternative approach is the only approach Respondent could have used, but established Ninth Circuit law clearly shows that Respondent has a legally enforceable claim for post-petition legal services rendered in this bankruptcy case.

Debtor's argument is ground in the "fact" being that because the obligation owing under the pre-petition contract for Ms. Terranella's services was "discharged," it could not exist and attempting to use that as a basis for fees due for post-petition services has to be a violation of the discharge injunction. Debtor puts too expansive a point on the discharge injunction.

11 U.S.C. § 524 provides the statutory basis for the court determining the scope and effect of the discharge entered in a bankruptcy case.

> § 524. Effect of discharge
>
> (a) A discharge in a case under this title–
>
> (1) **voids any judgment** at any time obtained, **to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged** under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> (2) **operates as an injunction against the commencement or continuation of an action**, the employment of process, or an act, to collect, recover or offset **any such debt [d] ischarged debt in (a)(1)as a personal liability of the debtor**, whether or not discharge of such debt is waived; and

> (3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

The fight being waged by Debtor admits that Ms. Terranella is not attempting to obtain payment of any pre-petition discharged obligation. Rather, the argument is that the pre-petition contract cannot be a contract upon which Debtor and Ms. Terranella agreed that post-petition services would be provided. That is a factual question to be determined in the appropriate state court litigation. See 4 Collier on Bankruptcy ¶ 524.02, Protection Provided by the Discharge, for an extensive discussion on the protection from the enforcement of a debt, not a novation of the underlying contract.

Nothing in 11 U.S.C. § 524 provides that a pre-petition contract is destroyed or that the discharge constitutes a novation. The contract exists, but the creditor is prohibited from attempting to enforce the pre-petition obligations owing on that as provided in 11 U.S.C. § 524. It is undisputed that Ms. Terranella is not attempting to enforce any obligation for services provided pre-petition.

The record is clear that Debtor engaged the services of Ms. Terranella to do extensive legal work post-petition to try to keep property out of the clutches of the Chapter 7 Trustee. The work billed for by Ms. Terranella is clearly for post-petition work, and the court does not find the evidence presented by Debtor to support her contention that the work was actually done by counsel for the limited partnership. Counsel for the limited partnership activities were limited to a "me too" role for the work done by Ms. Terranella.

For the state court litigation, the $64,000 question is whether Debtor and Ms. Terranella agreed post-petition for Ms. Terranella to provide new, post-petition services under the terms and conditions of the existing pre-petition attorney-client contract—did Debtor and Ms. Terranella elect to adopt that contract as the written agreement for the future post-petition services or did Debtor and Ms. Terranella elect to go forward on their handshake and Debtor's oral word that she would pay. That is not an issue for this court to determine, but a post-petition contract question for the state court.

The distinction of the contract *qua* contract, as opposed to a pre-petition obligation flowing from the contract that is discharged is reflected in the reaffirmation provisions of 11 U.S.C. § 524(c), the provisions governing reaffirmation of a pre-petition debt.

First, that provision addresses what is a "dischargeable," pre-petition obligation—"An agreement between a holder of a claim and the debtor, **the consideration for which, in whole or in part, is based on a debt that is dischargeable** . . . ." 11 U.S.C. § 524(c). This portion of 11 U.S.C. § 524 then sets out the requirements for the reaffirmation of a debt.

There is not a debt being reaffirmed. There is not an obligation being enforced that is based on the pre-petition dealings of Debtor and Ms. Terranella. Rather, it is asserted that the pre-petition Attorney-Client Agreement is the written embodiment used by Debtor and Ms. Terranella for the new, post-petition services that Debtor sought to protect the property that the Chapter 7 Trustee was chasing.

The Motion is denied. The court makes no determination as to whether the pre-petition contract was adopted as the writing between Debtor and Ms. Terranella for the terms of the post-petition legal services provided.

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 Sanctions for Violation of the Discharge Injunction by Gina Cooper, 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 denied. As set forth in the court's ruling, the "debt" being asserted is for post-petition legal services rendered by Mary Ellen Terranella, not a pre-petition debt that was discharged. The court makes no determination as to whether the pre-petition contract was adopted as the writing between Debtor and Ms. Terranella for the terms of the post-petition legal services provided or whether such services were provided without a written agreement.

22. **17-22593-E-7** **HOWARD THOMAS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, LIVAICH &NOLAN, CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S)**
DNL-4 **Steven Shumway** **6-21-18 [207]**

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 21, 2018. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has not been set properly 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 denied without prejudice.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Kimberly Husted, 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 November 30, 2017, through June 15, 2018. The order of the court approving employment of Applicant was entered on December 11, 2017. Dckt. 145. Applicant requests fees in the amount of $5,822.50 and costs in the amount of $44.30.

INSUFFICIENT NOTICE OF MOTION

Applicant provided twenty-eight days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing when fees of $1,000.00

or more are requested, 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 seven 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 Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Kimberly Husted, 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 the Motion is denied without prejudice.

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

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re*

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include assisting the Chapter 7 Trustee in investigating and obtaining release of the Estate's interest in real property and preparing objection to Howard Thomas's ("Debtor") claim of exemption. The Estate has $42,159.87 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 3.8 hours in this category. Applicant prepared the application to employ Applicant and prepared the First and Final fee application.

Contested Matters: Applicant spent 9.6 hours in this category. Applicant investigated and advised the Chapter 7 Trustee regarding the estate's interest in the sale of the real property located at 1913 Ambridge Drive, Roseville, California, netting about $81,517.35. Applicant prepared the Chapter7 Trustee's response to Debtor's motion for release of net sale proceeds.

Settlement: Applicant spent 3.5 hours in this category. Applicant prepared the Chapter 7 Trustee's objection to Debtor's claim of exemption against Subject Property. Applicant prepared the stipulation regarding Debtor's claim of exemption against real property and assisted the Chapter 7 Trustee in negotiating the stipulation.

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**
Russell Cunningham	10.00	$425.00	$4,250.00
Luke Hendrix	0.2	$325.00	$65.00
Nicholas Kohlmeyer	6.7	$225.00	$1,507.50
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$5,822.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $44.30 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.10	$15.70
Postage		$28.60
		$0.00
		$0.00
Total Costs Requested in Application		$44.30

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 $5,822.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $44.30 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee 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	$5,822.50
Costs and Expenses	$44.30

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Kimberly Husted, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

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

Fees in the amount of $5,822.50
Expenses in the amount of $44.30,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.