

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 20, 2023 at 10:30 a.m.

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1. [23-21205-E-7](#) **JERAMIE SABELMAN** **MOTION TO REJECT LEASE OR**
[BLF-3](#) **Michael Hays** **EXECUTORY CONTRACT**
1 thru 3 **6-29-23 [59]**

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

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 Lease Parties, Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The court notes, Creditor MJ Shelton Holdings LLC, who Trustee is attempting to reject a lease from, is not listed on the Certificate of Service. Therefore, it is not clear whether MJ Shelton Holdings LLC received proper notice. At the hearing, **XXXXXXXXXXXX**

The Motion to Reject Lease or Executory Contract 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 Reject Lease or Executory Contract is granted.

Nikki B. Farris, the Chapter 7, (“Movant”) moves to reject the following leases (the “Leases”):

1. 2995 Esplanade, Ste. 104, Chico, California - Nonresidential lease with Mark Leiker Properties; and
2. 2952 Esplanade, Ste. 130, Chico, California - Nonresidential lease with MJ Shelton Holdings LLC.

Movant asserts that the Leases are financially burdensome and not otherwise beneficial to the estate. 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 Debtor has only scheduled one of the two leases: the unexpired lease with Mark Leiker Properties for 2995 Esplanade, Ste. 104, Chico, California. Official Form 106G at Line 2.3. Dckt. 18. Debtor has not disclosed the lease with MJ Shelton Holdings LLC for 2952 Esplanade, Chico, California.

Movant states they received a copy of the lease documents for the undisclosed 2952 Esplanade lease which evidences a lease for personal office use that expires on September 30, 2024. *Id.* The lease verifies the monthly rent is \$1,339.00 through September 30, 2023, and \$1,379.00 through September 30, 2024. *Id.*, Exhibit B, Dckt. 61.

Movant has included both leases as exhibits with this motion. Dckt. 72.

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 several sound business judgment reasons for rejecting the Leases. The Leases were obtained to operate a restaurant. Debtor is no longer operating the restaurant, thus, rejection is appropriate to avoid unnecessary claims, liabilities, and expenses.

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 Leases. Therefore, the Motion is granted, and Movant is authorized to reject the following leases, pursuant to 11 U.S.C. § 365(a):

1. 2995 Esplanade, Ste. 104, Chico, California - Nonresidential lease with Mark Leiker Properties; and
2. 2952 Esplanade, Ste. 130, Chico, California - Nonresidential lease with MJ Shelton Holdings LLC.

~~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 Reject Lease or Executory Contract filed by Nikki B. Farris, 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:~~

- ~~1. 2995 Esplanade, Ste. 104, Chico, California - Nonresidential lease with Mark Leiker Properties, listed on Official Form 106G at Line 2.3, Dckt. 18, and~~
- ~~2. Nonresidential lease with MJ Shelton Holdings LLC for 2952 Esplanade, Ste. 130, Chico, California, as evidenced by Exhibit B, Dckt. 61.~~

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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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 Nikki B. Farris (“the Chapter 7 Trustee”) requests that the court authorize her to abandon property identified in the table below (“Property”). The Declaration of Nikki B. Farris has been filed in support of the Motion and provides testimony that the Property is of little, if any, value to the estate and that abandonment of the Property will avoid unnecessary claims and liabilities. Declaration, Dckt. 66.

<u>PROPERTY INTEREST</u>	<u>VALUE TO ESTATE</u>
Real Property	
1. 2995 Esplanade, Ste. 104, Chico, California (the "Restaurant") (leased from Mark Leiker Properties)	The Restaurant is leased property that cannot be sold for the benefit of the estate and therefore has no value to the estate and should be abandoned.
2. 2952 Esplanade, Ste 130, Chico, California (the "Office") (leased from MJ Shelton Holdings LLC)	The Office is leased property that cannot be sold for the benefit of the estate and therefore has no value to the estate and should be abandoned.
Personal Property	
3. All personal property located at the Restaurant (the "Restaurant Assets")	There is little, if any, value in the Restaurant Assets such that a sale would produce proceeds for the estate, especially considering the applicable liens. Therefore, the Restaurant Assets should be abandoned.
4. All personal property located at the Office (the "Office Assets")	There is little, if any, value in the Office Assets such that a sale would produce proceeds for the estate, especially considering the applicable liens. Therefore, the Office Assets should be abandoned.
Leased Equipment	
5. All personal property that is the subject of an agreement/lease with NCR Corporation (the "NCR Equipment")	The NCR Equipment is leased equipment that cannot be sold for the benefit of the estate and therefore has no value to the estate and should be abandoned.
6. All personal property that is the subject of two agreements/leases with Heartland, Inc. (the "Heartland Equipment")	The Heartland Equipment is leased equipment that cannot be sold for the benefit of the estate and therefore has no value to the estate and should be abandoned.
7. The dishwasher that is the subject of a lease with Ron Gager (the "Gager Equipment")	The Gager Equipment is leased equipment that cannot be sold for the benefit of the estate and therefore has no value to the estate and should be abandoned.
Vehicles	
8. 2018 Ford Transit Connect Van	Debtor valued this vehicle at \$24,555.00, exempted \$20,603.77 under California Code of Civil Procedure § 703.140(b)(5), and disclosed a lien of \$3,951.23 held by Ford Motor Credit. There is little, if any, value in this vehicle such that a sale would produce proceeds for the estate, especially considering the applicable liens and exemptions. Therefore, this vehicle should be abandoned.

9. 2019 Ford Transit Connect Van	Debtor valued this vehicle at \$25,327.00, exempted \$7,500.00 under California Code of Civil Procedure § 703.140(b)(2) and \$8,374.19 under California Code of Civil Procedure § 703.140(b)(5), and disclosed a lien of \$9,452.81 held by Ford Motor Credit. There is little, if any, value in this vehicle such that a sale would produce proceeds for the estate, especially considering the applicable liens and exemptions. Therefore, this vehicle should be abandoned.
10. 2021 Mercedes-Benz Sprinter	Debtor valued this vehicle at \$50,757.00 and disclosed a lien of \$58,371.00 held by Mercedes-Benz Financial Services. There is little, if any, value in this vehicle such that a sale would produce proceeds for the estate, especially considering the applicable liens and exemptions. Therefore, this vehicle should be abandoned.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Nikki B. Farris (“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:

Real Property

1. 2995 Esplanade, Ste. 104, Chico, California (the "Restaurant") (leased from Mark Leiker Properties)
2. 2952 Esplanade, Ste 130, Chico, California (the "Office") (leased from MJ Shelton Holdings LLC)

Personal Property

3. All personal property located at the Restaurant (the "Restaurant Assets"),
4. All personal property located at the Office (the "Office Assets")

Leased Equipment

5. All personal property that is the subject of an agreement/lease with NCR Corporation (the "NCR Equipment")
6. All personal property that is the subject of two agreements/leases with Heartland, Inc. (the "Heartland Equipment")
7. The dishwasher that is the subject of a lease with Ron Gager (the "Gager Equipment")

Vehicles

8. 2018 Ford Transit Connect Van
9. 2019 Ford Transit Connect Van
10. 2021 Mercedes-Benz Sprinter

is abandoned to Jeramie Ryan Sabelman by this order, with no further act of the Chapter 7 Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. 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 Employ and to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Sell, Employ, and Pay Auctioneer and waive the 14-day stay is granted.

Nikki B. Farris, the Chapter 7 Trustee, ("Trustee") seeks to (1) sell the estate's interest in certain personal property identified in the table below through auction; (2) employ TMC Auction, Inc. as auctioneer for the Trustee ("Auctioneer"); (3) pay Auctioneer commission and expenses from sale proceeds; and (4) waive the fourteen (14) day stay imposed by Federal Rule of Bankruptcy Procedure 6004(h). The court interprets Local Bankruptcy Rule 9014-1(d)(5)(iii) to allow these requests for relief to be joined in a single motion.

The Motion states with particularity that the sale is requested on the following grounds and the relief requested:

A. Property to Be Sold:

Item	Value	Exemption	Net
2016 KTM Baja990, VIN ending in 6709	\$5,000.00 - \$7,000.00		\$5,000.00 - \$7,000.00
2016 KTM 690 enduro, VIN ending in 2860	\$4,000.00 - \$5,000.00		\$4,000.00 - \$5,000.00
2013 KTM adventure, VIN ending in 1857	\$4,000.00 - \$5,000.00		\$4,000.00 - \$5,000.00
Suzuki DRZ-400	\$800.00 - \$1,200.00	\$500.00, CCP § 703.140(b)(5)	\$300.00 - \$700.00
2018 ural motorcycle, VIN ending in 7916	\$5,000.00 - \$7,000.00		\$5,000.00 - \$7,000.00
2013 Jeep Wrangler, VIN ending in 6031	\$15,000.00 - \$20,000.00		\$15,000.00 - \$20,000.00
Liquor License, Type 47 On-Sale General Eating Place License #598715	\$18,000.00 - \$24,000.00		\$18,000.00 - \$24,000.00
TOTAL	\$51,800.00 - \$69,200.00	\$500.00	\$51,300.00 - \$68,700.00

B. Legal Basis for the Sale

1. The Motion requests the sale be authorized pursuant to 11 U.S.C. § 363(b), which provides for the sale outside the ordinary course of business, subject to the liens and encumbrances thereon.

C. According to the schedules filed by Jeramie Ryan Sabelman, Debtor, (“Debtor”), the above-listed personal property is not encumbered by any liens. The Trustee anticipates that the sale of the above-listed personal property will generate between \$51,300.00 and \$68,700.00 in proceeds for the Bankruptcy Estate. As discussed below, the Auctioneer is to be paid a commission of 20% of the gross sale proceeds plus reimbursement for expenses in an amount not to exceed \$3,915.00. Therefore, the Bankruptcy Estate is expected to benefit by receiving an anticipated net sales proceeds of between \$37,125.00 and \$51,045.00.

\$51,300.00	Minimum anticipated net sale price
(\$10,260.00)	20% commission for Auctioneer from gross sale proceeds
(\$3,915.00)	Maximum reimbursement for Auctioneer expenses
<u>\$37,125.00</u>	Net sales proceeds for the Bankruptcy Estate
\$68,700.00	Maximum anticipated net sale price
(\$13,740.00)	20% commission for Auctioneer from gross sale proceeds
(\$3,915.00)	Maximum reimbursement for Auctioneer expenses
<u>\$51,045.00</u>	Net sales proceeds for the Bankruptcy Estate

Approval of Sale of Property

The Bankruptcy Code permits Trustee to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Trustee proposes to auction the personal property commonly known as:

1. 2016 KTM Baja990, VIN ending in 6709
2. 2016 KTM 690 enduro, VIN ending in 2860
3. 2013 KTM adventure, VIN ending in 1857
4. Suzuki DRZ-400
5. 2018 ural motorcycle, VIN ending in 7916
6. 2013 Jeep Wrangler, VIN ending in 6031
7. Liquor License, Type 47 On-Sale General Eating Place License #598715

The proposed Public Auction will be held online at www.tmcauction.com on August 8, 2023. Trustee requests that the Auctioneer be authorized to set and change the auction dates and to conduct follow-up auctions if appropriate without further order of this court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because auctioning the Property will provide a greater net return to the Estate than attempting to sell the items through a private sale.

Employment of Auctioneer

Trustee argues that Auctioneer's appointment and retention is necessary to sell the Property because the Auctioneer has extensive experience and is able to expose the Property to a large number of prospective purchasers. The terms of employment include but are not limited to:

- A. Auctioneer will conduct an auction on a mutually agreed-upon date following court approval. The anticipated auction date is August 8, 2023.

The court notes that the motion and supporting declarations state that the Auction will take place online at www.tmcauction.com; however, the employment agreement appears to be a standard form contract that states that the Auction will be held at 1551 Vineyard Road, Roseville, CA 95678. Compare Motion ¶ 18 (Dckt. 69), and Papp Decl. ¶ 4 (Dckt. 73), with Exhibit A ¶ 3 (Dckt. 72). At the hearing, ~~XXXXXXXXXX~~

- B. Auctioneer will oversee the auction activities and will reach potential buyers through appropriate marketing and advertising.
- C. Auctioneer will post an online auction website with bidding for specific period.
- D. Auctioneer will collect and remit payment.
- E. Auctioneer will prepare all necessary paperwork to transfer title, and all documents will be delivered to Trustee for signature at the conclusion of the Auction.
- F. Within thirty (30) days following the completion of the sale, Auctioneer will provide to Trustee and file with the court a sale report.
- G. Promptly following the completion of the sale and collection of sale revenues, Auctioneer will turn over the gross Auction proceeds to the Bankruptcy Estate.

The fully executed employment agreement has been filed with the court as Dckt. 72. The court notes that the standard form contract employment agreement (Exhibit A, Dckt. 72) is somewhat vague as to specific duties Auctioneer agrees to undertake; however, the declarations and motion provide additional, more specific information. Much of the above-listed terms of employment is taken not from the employment agreement, but from the declaration filed by Lonny Papp, President of TMC Auction, Inc. (Papp Decl., Dckt. 73).

Lonny Papp testifies that Auctioneer has performed as the auctioneer for Trustee in the past, that Auctioneer is ready to conduct a live auction online, and that Auctioneer will receive a commission of 20% of the gross sale price of the Property and up to \$3,915.00 reimbursement for expenses incurred in preparing the Auction items for sale. Papp Decl., Dckt. 73.

Lonny Papp testifies that he and the company do not represent or hold any interest adverse to Debtor or to the Bankruptcy Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys or accountants. *Id.*

At the hearing, counsel for the Trustee confirmed that there is no buyer premium or other amount to be paid to Auctioneer (a professional employed by the Trustee) by the buyer or a third-party.

Employment of a Disinterested Professional

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

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

Here, the professional sought to be hired by the Trustee is being paid 20% of the gross sales proceeds as a commission.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ TMC Auction, Inc. as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 72 and the more specific terms described in the declaration of Lonny Papp, Dckt. 73.

Allowance of Professional Fees

The Motion seeks to allow compensation to the Auctioneer of 20% of the gross sales price, and repayment of certain expenses not to exceed \$3,915.00.

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)).

While professionals are often compensated on an hourly lodestar basis, such is not an exclusive method of compensation. Real estate agents and auctioneers, for example, are compensated by a reasonable percentage commission/fee based on the sales price. As with other professionals, they can also be reimbursed for the costs and expenses, unless such are built into the percentage commission.

The court must determine whether the percentage commission sought for the Auctioneer (here, 20% commission) constitutes reasonable compensation. 11 U.S.C. §§ 328, 330. Trustee estimates that the gross sale proceeds will be between \$51,300.00 and \$68,700.00. Therefore, Auctioneer stands to receive between \$10,260.00 and \$13,740.00 in commission. Trustee testifies that “[Auctioneer’s] services are necessary to facilitate a liquidation of the Auction Items and produce the highest and best return to the bankruptcy estate.” Farris Decl. ¶ 11, Dckt. 69. Trustee further testifies that “[t]he commission requested is the normal and reasonable compensation for similar work [Auctioneer] has performed in similar matters.” *Id.* Therefore, in light of these representations and the value that the Auctioneer is projected to provide to the Bankruptcy Estate through Auctioneer’s services, 20% commission does not appear to be unreasonable.

Approving fees of up to \$13,740.00 based on a commission of 20% does not strike the court as unreasonable. In these situations the court is concerned, and has the obligation arising under 11 U.S.C. § 328(a) to consider whether a pre-authorized fee amount, such as this 20% commission, turns out to be unreasonable based on later-discovered facts and information.

Here, with gross sales proceeds of between \$51,300.00 and \$68,700.00, a 20% commission of between \$10,260.00 and \$13,740.00 is not unreasonable. However, if the Property sells for substantially more than anticipated, and the \$51,300.00 to \$68,700.00 projected sales price provided to the court is not accurate, then a flat 20% commission on the gross sales proceeds may be unreasonable based up the actual sales price information.

In this type of situation, to protect both the Trustee and Auctioneer, and for the court to fulfill its duties arising under 11 U.S.C. § 328, the court approves the 20% commission, with the amount of such fees not to exceed a specified amount, and any remaining proceeds in excess thereof goes to the Trustee for the Bankruptcy Estate. Recognizing that the higher gross sales proceeds might require additional work or expense by the Auctioneer, the court allows the auctioneer to seek by a supplemental motion the allowance of a greater amount that the cap set in the employment and allowance order.

In this Bankruptcy Case, the court approves a 20% commission paid to the Auctioneer computed on the gross sales proceeds, with a maximum of \$13,740.00 in commissions to be paid to Auctioneer, and all other sales proceeds, after payment of the Auctioneer’s actual expenses in selling the Property, not to exceed \$3,915.00, shall be paid to the Trustee for the benefit of the Bankruptcy Estate.

Additionally, if the Auctioneer or Trustee believe that a higher amount than \$13,740.00 for the commissions paid to the Auctioneer for the sale of the Property is appropriate, they may file a simple supplemental motion requesting an additional amount be allowed as compensation, and provide the court with a simple explanation why the higher amount is appropriate. (The simple explanation cannot “simply” be, “well, the gross sales proceeds were higher, so the commission fees allowed should be higher.”)

FEES AND COSTS & EXPENSES ALLOWED

Fees

Contingency Fee: Percentage of Sale

Auctioneer computes the fees for the services provided as a percentage of the monies recovered for the Trustee. Auctioneer has been retained by Trustee to represent Trustee in the marketing and sale of personal property described as:

1. 2016 KTM Baja990, VIN ending in 6709
2. 2016 KTM 690 enduro, VIN ending in 2860
3. 2013 KTM adventure, VIN ending in 1857
4. Suzuki DRZ-400
5. 2018 ural motorcycle, VIN ending in 7916
6. 2013 Jeep Wrangler, VIN ending in 6031
7. Liquor License, Type 47 On-Sale General Eating Place License #598715

(“Property”). The Property will be sold by public auction. Auctioneer’s commission for selling the Property is 20% of the gross sales proceeds, not to exceed \$13,740.00.

The Auctioneer may not be compensated, receive any other fees or payments from any other person, including any “Buyer’s Premium” for or in connection with the sale of this Property.

Costs & Expenses

Movant also seeks the allowance and recovery of costs and expenses not to exceed \$3,195.00.

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 they seek to move forward with preparation of the Auction Items immediately upon entry of the court’s order approving the sale.

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.

As drafted by the court in the Tentative Ruling, the relief granted in the order is stated as:

IT IS ORDERED that the Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) the Property commonly known as:

1. 2016 KTM Baja990, VIN ending in 6709
2. 2016 KTM 690 enduro, VIN ending in 2860
3. 2013 KTM adventure, VIN ending in 1857
4. Suzuki DRZ-400
5. 2018 ural motorcycle, VIN ending in 7916
6. 2013 Jeep Wrangler, VIN ending in 6031
7. Liquor License, Type 47 On-Sale General Eating Place License #598715

(“Property”), on the following terms:

- A. The Property shall be sold by Public Auction online on August 8, 2023.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the Auction.
- C. Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ TMC Auction, Inc. as Auctioneer for Trustee (“Auctioneer”) on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 72, and the Declaration of Lonny Papp, Dckt. 73, as modified and allowed by this Order authorizing the following fees and expenses to be paid Auctioneer:

1. Fees in the form of a 20% commission computed on the gross sales price of the Property, with the commission not to exceed \$13,740.00 in the aggregate.
2. Expenses incurred by Auctioneer relating directly to the sale of the Property in the amount not to exceed an aggregate total of \$3,195.00,

All sales proceeds in excess of the 20% commission and expenses allowed in this Order shall be disbursed to the Trustee for the benefit of the Bankruptcy Estate in this Case.

IT IS FURTHER ORDERED that Auctioneer may not collect any fees, payments, or other amounts from any persons other than the Trustee relating to the sale of the Property. Auctioneer taking any additional amounts from persons other than the Trustee shall be grounds for vacating the allowance of any compensation and payment of expenses for serving as the Auctioneer employed as a professional by the Trustee, and the allows of \$0.00 in fees and expenses for Auctioneer.

IT IS FURTHER ORDERED that the Auctioneer or Trustee may request the court to allow an aggregate of more than \$13,740.00 in commission from the sale of the Property by a “simple” supplemental motion providing the court with sufficient information as to why the higher amount is reasonable.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the proceeds from the sale of the Property without further order of the court.

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

Counsel for the Trustee shall prepare and lodge with the court a proposed order consistent with the Ruling above.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 22, 2023. By the court’s calculation, 28 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 court notes that the Certificate of Service inadvertently states that the documents were served on July 22, 2023 (Dckt. 266, at 2); however, the Certificate of Service states that it was executed on June 22, 2023 (Dckt. 266, at 4). The July 22nd date appears to be a typographical error.

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant (“Applicant”) for Kimberly J. 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 December 14, 2021, through June 19, 2023. The order of the court approving employment of Applicant was entered on December 21, 2021. Dckt. 244. Applicant requests fees in the amount of \$7,844.00 and costs in the amount of \$123.25.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include analyzing tax implications of stock sale, preparing federal and California corporation income tax returns, and administrative functions. 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.

Analyzing Tax Implications of Stock Sale: Applicant spent 13.1 hours in this category. Applicant assisted trustee and counsel in reviewing and analyzing tax implications of selling corporate stock, including review and consultation on tax matters involving settlement discussions and settlement agreement, communication with debtor counsel and accounting professionals, and determination of expected income tax liabilities.

Preparing Federal and California Corporation Income Tax Returns: Applicant spent 4.1 hours in this category. Applicant prepared June 30, 2023 federal and California estate income tax returns, including Cloobek motion and related documents for authority to pay federal and state income taxes incurred on sale of corporate stock.

Administrative Functions: Applicant spent 1.6 hours in this category. Applicant prepared employment documents and Applicant’s fee application and related documents.

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
Michael Gabrielson, Principal	7.3	\$405.00	\$2,956.50
Michael Gabrielson, Principal	11.5	\$425.00	\$4,887.50
Total Fees for Period of Application			\$7,844.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$123.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	\$0.10 per page	\$69.60
Postage	n/a	\$53.65
Total Costs Requested in Application		\$123.25

Error in Calculating Copying Costs

The court notes that there appears to be a mathematical or typographical error in Exhibit 2 (Dckt. 265). The Exhibit states that 348 pages were copied at the rate of \$0.10 per page, for a total of \$69.60. However, 348 multiplied by \$0.10 totals \$34.80, which is exactly half of the requested \$69.60. Therefore, the court will allow copying costs in the amount of \$34.80, total costs to be \$88.45.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$7,844.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$88.45 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$7,844.00
Costs and Expenses	\$88.45

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 Gabrielson & Company (“Applicant”), Accountant for Kimberly J. 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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$7,844.00
Expenses in the amount of \$88.45,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2023. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is XXXXX.

Pino & Associates, the Attorney (“Applicant”) for Kimberly J. Husted, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Applicant does not specify the period in which fees are requested for, but an examination of the Motion, Declarations, and Exhibits indicate fees are requested for the period January 2022 through November 2022. The order of the court approving employment of Applicant was entered on January 19, 2022. Dckt. 147. Applicant requests fees in the amount of \$30,000.00 and costs in the amount of \$2,485.22.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include litigating the Adversary proceeding on behalf of Client; assisting with the sale of the Muscat Property (Dec., ¶ 5; Dckt. 235); preparing motions for approval of sale; and reviewing public records of the Muscat Property. The court finds the services were beneficial to Client and the Estate and were reasonable.

Fees Requested

Failure to Provide Task Billing and Contemporaneous Time Records

This court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested. FN.2.

Additionally, the court finds it necessary for attorneys to provide their time and billing records so the court can see what legal services are asserted to be recoverable. Absent these records, the court has no ability to confirm whether the limited task billing provided is true, correct, reasonable, and awardable.

Here, Applicant does not provide either a task billing or contemporaneous time records. Applicant merely provides an almost five-page narrative history of events of the case and the various Motions and proceedings that Applicant worked on. Applicant has not provided a breakdown of the categories of services, nor has Applicant provided any information regarding hours associated with the services Applicant worked on and provided to Client. Instead, Applicant has given us a timeline of dates for almost a year’s worth of services for various Motions and proceedings.

However, with no task billing and contemporaneous time records for the court to easily discern, the court cannot make a determination as to whether the \$30,000 lump sum is reasonable.

Flat Fee Requested

Applicant seeks to be paid a single sum of \$30,000.00 for its fees incurred for Client. However, the court approved Applicant's employment on an hourly rate fee. Dckt. 147. Client acknowledges that Applicant's employment was authorized by the court on an hourly basis. Declaration, Dckt. 235. Ms. Pino's contemplated hourly rate was \$375.00 per hour. Dckt. 232. Ms. Mahal, the associate attorney, also rendered services with an agreed contemplated hourly rate of \$300.00 per hour. *Id.*

The court did not approve a flat fee agreement. Had the compensation been sought on hourly rates as originally contemplated, the Motion states the compensation would be in excess of \$55,000.00. Dckt. 232. It is common practice for an Applicant to voluntarily and "generously" agree to seek reduced fees. However, absent any time records, the court cannot discern whether Applicant provided the reasonable and necessary services that Applicant is willing to offer the reduced fee for to Client.

In reviewing the Adversary Proceeding file, Applicant substitute in as counsel for the Trustee on January 31, 2022. 21-02084; Order, Dckt. 13. The request for entry of default was filed on February 1, 2022. *Id.*; Dckt. 15. The Motion for Entry of Default Judgment was filed on February 17, 2022. *Id.*; Dckt. 27. The Order granting the Motion for the Entry of Default Judgment was entered on March 21, 2022. *Id.*; Dckt 36. No opposition to that Motion was filed by the Defendants.

The Default Judgment was entered on March 29, 2022, ordering the Defendant to vacate the Property and turn possession over to the Trustee by April 28, 2022. No motions seeking the enforcement of the Judgment were filed.

In the Bankruptcy Case, Applicant substituted in as counsel for the Trustee on January 31, 2022. Order; Dckt. 154. An Application for Fees by Trustee's former counsel was filed, and an order allowing legal fees of \$7,245.00 and expenses of \$217.02 for the former counsel was entered on March 21, 2022. Order, Dckt. 174. A Motion to Sell the Muscat Property was filed on July 28, 2022. Dckt. 175. This Motion to Sell was dismissed by the Trustee on August 16, 2023, stating the buyer had cancelled the purchase. Dismissal; Dckt. 183.

On September 29, 2023, the Trustee filed a new Motion to Sell the Real Property. That Motion was not opposed, and the court entered its order granting the Motion, authorizing the sale for \$461,000.00. Order; Dckt. 207. The Trustee reported that the sale was consummated for the \$461,000.00. Report; Dckt. 213.

No other contested matters were commenced, other than Applications for fees by the Accountant for the Trustee (Order authorizing payment of \$1,402.50 in fees and \$69.66 in costs; Dckt. 231) and the present Application.

From the Motion and Supporting Declarations, the court cannot determine whether the fees of \$30,000.00 are reasonable and allowable pursuant to 11 U.S.C. § 330. From a review of the Docket, this would appear to be a "simple" case in which the Trustee obtained a default judgment, it was complied with and no enforcement activities were required, secured claims were paid through the sale escrow, and no litigation was required.

At the hearing, **XXXXXXX**

Costs & Expenses Requested

Applicant is seeking the recovery for expenses incurred during the representation of Trustee. The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Pacer		\$0.90
Postage		\$204.65
Electronic research		\$260.67
Copying	\$0.25	\$1,963.75
Parking		\$5.00
Court call		\$50.25
Total Costs Requested in Application		\$2,485.22

Photocopy Costs at \$0.25 per Copy

In looking at the costs, Applicant charges \$0.25 a page for photocopies. Motion, Dckt. 232; Declaration, Dckt. 234; Exhibit 5, Dckt. 236. In this court, a cost of \$0.10 per page is common practice. The \$0.25 cents per page is 150% more than what the court commonly sees as postage copying charges. If Applicant were to charge only \$0.10 per page, costs for copying would be \$785.50. This is almost a \$1,200 difference from what was charged.

The court has not been provided adequate evidence for why these charges are above the common charges that the court sees among fee applicants in this court. Given Applicant made an estimated 7,855 copies, this is a \$1,178.20 difference in fees. At the hearing **XXXXXXX**

The court reduces the photocopy charge to \$0.10 a page, thus reducing copying costs to \$785.50. This is without prejudice to Applicant documenting the actual cost for photocopies is more than \$0.10 a page and that such higher amount is reasonable. ^{FN.1}

FN. 1. The court recalls a case from a few years back where the attorney asserted that the \$0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney \$0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that \$0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.

Attempting to Recover Inappropriate Costs - CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include CourtCall.

While Applicant requested reimbursement for costs associated with making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to attend hearings via CourtCall is at the cost of the attorney included in the hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing attorneys to market their legal skills (and generate fees from a much larger client base).

Therefore, Applicant is only entitled to receive costs in the amount of \$\$\$\$\$ (with photocopy costs at \$0.10 / \$0.25 per page and no \$50.25 CourtCall cost)

~~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 Pino & Associates (“Applicant”), Attorney for Kimberly J. 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 Pino & Associates is allowed the following fees and expenses as a professional of the Estate:~~

~~Pino & Associates, Professional employed by the Chapter 7 Trustee~~

~~Fees in the amount of \$\$\$\$\$\$\$~~

~~Expenses in the amount of \$xxxx.xx,~~

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

The report provides the end of February balances in the bank account, the accounts receivable, other proceedings that may be required, and that a hearing on a Motion to Confirm is set for April 13, 2023.

At the Status Conference the Parties requested that the Status Conference be continued to April 13, 2023, so it could be conducted shortly after the April 5, 2023 continued First Meeting of Creditors. Additional, the Parties agreed that the hearing on the Motion to Confirm the Chapter 13 Plan be continued to 11:30 a.m. on May 18, 2023, to allow the parties to address issues and possible oppositions through discussions rather than having to file oppositions for matters which the Debtor may be addressing.

The Debtor in Possession provides information in support of the Debtor qualifying as a family farmer eligible to file a Chapter 12 bankruptcy case. Attached to the Statement are copies of tax return information concerning the Debtor's farming income and debt.

The Chapter 12 Trustee reports that the two Debtors and counsel appeared at the March 15, 2023 First Meeting of Creditors, and that the Meeting has been continued to April 5, 2023. Trustee March 15, 2023 Docket Entry Report.

The proposed Chapter 12 Plan filed on March 8, 2023 (Dckt. 34) provides for creditors divided into classes of claim. The Plan is to be funded from the continued farming operations. The two Debtors provide their Declaration addressing the events that lead up to the filing of this Chapter 12 Bankruptcy Case, the changes going forward, and the basis of their belief as to how going forward they will be able to perform the Plan. Dckt. 39.

The Status Report does not address the accuracy of the information of the Schedules that the two Debtors own extensive real property, but no personal property assets. (See the Minutes below from the February 9, 2023 Status Conference.) This include stating they have no household goods, no electronics, no clothing, no retirement savings, no crops (either growing or harvested), and no accounts receivable or other obligations owed to them by another person. This is contradicted in part by the Status Conference Statement. No amended Schedules A/B has been filed.

The court also notes that no property is claimed as exempt on Schedule C. Dckt. 14 at 19.

On Schedule I, Debtor states having no income from the farming operation. *Id.* at 44-45.

FEBRUARY 9, 2023 STATUS CONFERENCE

This Chapter 12 case was filed on December 8, 2022. The Chapter 12 Trustee reports that the First Meeting of Creditors has been continued to February 17, 2023. January 12, 2023, Trustee Docket Entry Report.

The debtors in this case are two individuals. The Chapter 12 Debtor's Schedules were filed on December 15, 2022. Dckt. 14. The assets identified include:

- A. Nine parcels of real property.
- B. Twenty (20) vehicles (some of which are farm equipment).

- C. No household goods or furnishings.
- D. No Electronics.
- E. No Clothing.
- F. No Jewelry.
- G. Several bank accounts.
- H. Additional farm tractors and equipment.
- I. No accounts receivable or other amounts owed them by someone else.

On Schedule C, *Id.*, Debtor claims no exemptions.

On Schedule I, debtor Hardave Dulai states he is self-employed and debtor Sukhbinder Dulai states she is an educator employed by the Yuba County Schools. *Id.*, p. 44-45. Debtor Hardave Dulai has \$0.00 in income from the farming operation, and debtor Sukhbinder Dulai is the sole income generator with her monthly wages from her job in education.

On Schedule J, Debtor lists four dependants and a parent (but does not list the parent providing any contribution for expenses), and that Debtor’s monthly net income is \$32.75. *Id.* At 45-46.

On the Statement of Financial Affairs the income information is somewhat different:

Debtor Hardave Dulai		Debtor Sukhbinder Dulai
	2022 Income (11 Months)	
\$0.00	Wages	\$0.00
\$0.00	Operating a Business (Gross Income)	\$0.00
	2021	
\$0.00	Wages	\$0.00
\$927,032.00	Operating a Business (Gross Income)	\$0.00
	2020	
\$0.00	Wages	\$40,293.00

\$0.00	Operating a Business (Gross Income)	\$0.00
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Id., 49-50.

As of the court’s February 6, 2023 review of the Docket, no Status Report had been filed by Debtor.

At the Status Conference, counsel for the Chapter 12 Debtor requested that the Status Conference be continued 30 days to allow lead counsel, Mr. Dwiggins to be present.

The Chapter 12 Trustee reported that since Mr. Dwiggins could not be at the First Meeting of Creditors and it had to be continued. At the First Meeting, the Chapter 12 Trustee was told that there was no insurance on the property of the bankruptcy estate. One general certificate was provided, but no information about what insurance was provided.

7. [22-23180-E-12](#) **HARDAVE/SUKHBINDER DULAI** **MOTION TO DISMISS CASE**
[POL-2](#) **Bruce Dwiggins** **6-20-23 [85]**

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—Opposition Filed.

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, Trustee, creditors, and Office of the United States Trustee on June 20, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss Case is granted.

The Motion to Dismiss the Chapter 12 bankruptcy case of Hardave Singh Dulai and Sukhbinder Kaur Dulai (“Debtor in Possession”) has been filed by Creditor Metropolitan Life Insurance Company (“Movant”) pursuant to 11 U.S.C. § 1208(c).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on December 8, 2022.
2. Movant holds a secured claim against all real property owned by Debtor.
3. Debtor in Possession defaulted on the Note by failing to pay the installments due on January 10, 2022 and July 10, 2022. Additionally, Debtor in Possession defaulted under the Deed of Trust by failing to pay certain real estate taxes for 2021.
4. Since the Petition Date, Debtor in Possession has not made any payments under the Note.
5. Additionally, Debtor have failed to pay real estate taxes for 2021/2022 and 2022/2023.
6. It has been more than six months since the filing of the case. Debtor in Possession has not filed any documents with the court in seventy (70) days and have not communicated with Movant regarding possible plan terms since before the court denied confirmation of their plan on May 11, 2023.
7. Cause exists under 11 U.S.C. § § 1208(c)(1), (2), (3), and (9).

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an opposition on July 6, 2023. Debtor in Possession states they are reaching the months when they will have an income to fund a Plan and there will be a plan filed prior to the date of this hearing.

MOVANT'S REPLY

Movant filed a Reply on July 13, 2023. Dckt. 86. Movant states there is nothing on record supporting the factual allegations contained in Debtor's opposition. Additionally, Debtor in Possession provides no legal authority.

The court agrees. Debtor in Possession provides numerous factual allegations in the Opposition, including circumstances surrounding their farming operations that have prevented them from putting forth a confirmable plan. Pursuant to Local Bankruptcy Rule 9014-1(d)(1) and (d)(3)(D), every opposition shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4). Here, Debtor in Possession failed to provide evidence in the form of a declaration or otherwise to support their objection. Additionally, pursuant to Local Bankruptcy Rule 9014-1(d)(1) and (d)(3)(A), Debtor in Possession failed to provide any legal grounds to support their Opposition. Debtor in Possession's Opposition is deficient in factual and legal grounds to deny the Motion.

DISCUSSION

Pursuant to 11 U.S.C. § 1208(c), on request of a party in interest, and after notice and a hearing, the court may dismiss a case for cause, include:

- (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1221 of this title;
- (4) failure to commence making timely payments required by a confirmed plan;
- (5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan;
- (9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; and
- (10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

Movant argues cause exists under (1), (2), (3), and (9).

Prior Plan Denied, No New Plan

Debtor in Possession did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor in Possession's prior plan on May 16, 2023. A review of the docket shows that Debtor in Possession has not yet filed a new plan or a motion to confirm a plan.

Debtor in Possession's non-authenticated Opposition offers an explanation that an initial plan was timely filed during the suggested 90 day period, however, a new plan has not been filed because they "needed time" to have income to fund a plan. Debtor in Possession has not made it clear why Debtor in Possession has to wait until they have sufficient income to fund a plan. The court regularly sees confirmable plans in which debtors in possession project a low income for certain months, and an increased income in future months, dependent on the crops' seasons.

The court finds there is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1308(c)(1).

Failure to Timely File a Plan

11 U.S.C. § 1221 states a plan shall be filed no later than 90 days after the order for relief. Here, Debtor in Possession filed their initial Plan on March 8, 2023, which was roughly 90 days after their bankruptcy case was filed. The court finds Debtor in Possession satisfied the requirements of 11 U.S.C. § 1208(c). However, Debtor in Possession's failure to file an Amended Plan or Motion to Confirm, as addressed above, is unreasonable delay that is prejudicial to creditors.

Failure to Provide for Movant

Movant states Debtor in Possession have made no payments under the note since the Petition Date. The court finds failure to make payments is unreasonable delay that is prejudicial to Movant. 11 U.S.C. § 1308(c)(1).

Continue Loss or Diminution of Estate

Movant argues Debtor in Possession's failure to file anything with the court since April 11, 2023 means Debtor in Possession is experiencing continuing diminution and there is no reasonable likelihood of rehabilitation. The court does not find that Movant has provided adequate evidence to show that Debtor in Possession has been experiencing a loss to or diminution of the estate. However, an absence of payment does suggest rehabilitation is unlikely for Debtor in Possession.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion To Dismiss filed by Creditor Metropolitan Life Insurance Company ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2023. By the court’s calculation, 41 days’ notice was provided. 14 days’ notice is required.

The court notes, 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 regarding the employment of Becky Melville and Sierra Real Estate Services, Inc., and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be 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)(1).

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 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 Employ is granted.

Timothy Wilson (“Debtor”) seeks to employ Becky Melville and Sierra Real Estate Services, Inc. (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to sell two parcels of Debtor’s real property, APN 031-260-003-0000 and APN 023-070-016-0000, located at 16030 Schafer Ranch Road, Pioneer, CA (“Property”).

APN 031-260-003-0000 ("Parcel 1")

Parcel 1 is a vacant parcel located in the Property. Pursuant to the Vacant Land Agreement, Exhibit C, Dckt. 83, Broker is to be paid a 5.00% commission. Additionally, the price of Parcel 1 is to be listed as \$525,000.00.

APN 023-070-016-0000 ("Parcel 2")

Parcel 2 is a residential parcel located in the Property. Pursuant to the Residential Listing Agreement, Exhibit D, Dckt. 83, Broker will be paid a commission of 5.00%. However, if Broker represents the buyer, the commission will be reduced to 4%. Additionally, if purchased by Thommy Sizemore, and he is unrepresented, commission will only be 3%. Parcel 2 will be listed as \$2,125,000.00. Modification of Listing Agreement, Exhibit Ex, Dckt. 83.

Becky Melville, a real estate broker of Sierra Real Estate Services, Inc., testifies that she and her team are marketing the Parcels, that she has conducted an initial investigation of the Property, and that she has substantial experience in the marketing and sale of real estate in Northern California. Becky Melville testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Becky Melville and Sierra Real Estate Services, Inc. as Broker for the Chapter 12 Estate on the terms and conditions set forth in the Listing Agreements filed as Exhibits C, D, and E. Dckt. 83. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue 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 Employ filed by Timothy Wilson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ Becky Melville and Sierra Real Estate Services, Inc. as Broker for Debtor on the terms and conditions as set forth in the Listing Agreements filed as Exhibits C, D, and E. Dckt. 83.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

9. 23-21899-E-12 WF-4	JAKOB/GLADYS WESTSTEYN Daniel Egan	OBJECTION TO CLAIM OF CALIFORNIA FRANCHISE TAX BOARD 6-20-23 [23]
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Pursuant to prior order, Dckt. 48, the Objection to Proof of Claim Number 6 of Franchise Tax Board was continued to August 24, 2023 at 10:30 a.m.

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

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, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 7, 2023. By the court’s calculation, 13 days’ notice was provided.

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

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The Motion for Authority to Use Cash Collateral is granted.

Focus Management Group USA, Inc. (“Plan Administrator”) moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC (“Summit”). Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor’s business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

- A. Plan Expenses in accordance with the Stipulated Budget such as insurance and professional fees for the time period July 1, 2023, through September 30, 2023.
- B. A windup period if the estate is fully administered at that time as may be extended by Summit’s further stipulation.

The use of cash collateral is authorized for the expenses as set forth in the Budget filed as Exhibit A (Dckt. 1887), filed in support of the Motion and incorporated herein by this reference.

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

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for

the period July 1, 2023, through September 30, 2023, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by the Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

At the hearing, counsel for the Plan Administrator discussed that the request is for the second quarter for 2023.

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling. The Cash Collateral Budget; Exhibit A, Dckt. 1887; shall be attached to the proposed order as an Addendum and incorporated therein.

FINAL RULINGS

11. [23-21407-E-11](#)
[RHS-1](#)

BELLA VIEW CAPITAL, LLC
Peter Macaluso

ORDER TO SHOW CAUSE
6-26-23 [40]

Final Ruling: No appearance at the July 20, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and United States Trustee as stated on the Certificate of Service on June 28 and 29, 2023. The court computes that 18 and 19 days' notice has been provided.

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

On April 28, 2023, Bella View Capital, LLC commenced this Case as a voluntary Chapter 7 case. A Notice of Incomplete Filing and Intent to Dismiss if the missing documents were not filed within the specified deadline was issued by the court. Dckt. 4. The Documents identified in the Notice are:

Verification and Master Address List
Attorney's Disclosure Stmt.
Schedule A/B - Real and Personal Property
Schedule D - Secured Creditors
Schedule E/F - Unsecured Claims
Schedule G - Executory Contracts
Schedule H - Codebtors
Statement Re: Corporate Debtor
Statement of Financial Affairs
Summary of Assets and Liabilities

Id.

On May 2, 2023, a Motion to Convert the Case to one under Chapter 11 was filed. Dckts. 8, 10. On May 15, 2023, the court entered its order converting this case to one under Chapter 7. Dckt. 15.

On May 16, 2023, the court issued a Notice to File Documents in Converted Case. Dckt. 16. The missing Documents in Converted Case, the deadline for filing which was set for May 30, 2023, re identified in the Notice as:

Form 122B Statement of Monthly Income
List - 20 Largest Unsecured Creditors
List - Equity Security Holders

Master Equity Security Holder Address List

Id.

On June 2, 2023, the Debtor ^{FN. 1.} filed the following document:

Disclosure of Compensation of Counsel for Debtor in Possession, Peter Macaluso, Esq. (As substitution counsel).

Dckt. 25.

FN. 1. Though the case has been converted to one under Chapter 11 and the Debtor is serving as the Debtor in Possession, the court references the “Debtor” as the party filing these documents, as these are documents which a debtor, not the fiduciary debtor in possession, must file.

On June 2, 2023, the Debtor also filed the following documents:

Summary of Assets and Liabilities
Schedules A/B, D, E/F, G, H
Statement of Financial Affairs

Dckt. 26.

IDENTIFIED MISSING DOCUMENTS

The Clerk of the Court has reviewed the Docket and has determined that the following required documents have not been filed by the Debtor:

Master Address List
Statement Re: Corporate Debtor
List of 20 Largest Unsecured Creditors
List of Equity Security Holders
Master Equity Security Holder Address List

This was not identified at the time of the June 22, 2023 Status Conference, which has been continued to October 18, 2023. Such October date is not a reasonable delay in having the Debtor address these missing documents.

DEBTOR’S REPLY

On July 12, 2023, Debtor filed a Reply stating that the missing documents were filed on July 11, 2023. Dckt. 51. Upon the court’s review of the docket, Debtor filed:

Master Address List - Dckt. 43
Statement Re: Corporate Debtor - Dckt. 45.
List of 20 Largest Unsecured Creditors - Dckt. 48
List of Equity Security Holders - Dckt. 47
Master Equity Security Holder Address List - Dckt. 46

Therefore, Debtor has resolved the Order to Show Cause.

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

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

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

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