

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

July 29, 2021 at 10:30 a.m.

1. [20-90633-E-7](#)
[BLF-6](#)

TERESA TAYLOR
Pro Se

**MOTION FOR COMPENSATION FOR
GARY FARRAR, CHAPTER 7
TRUSTEE(S)
7-1-21 [96]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2021. 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 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 Trustee Fees is granted.

July 29, 2021 at 10:30 a.m.

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Gary Farrar, the Chapter 7 Trustee (“Applicant”) for the Bankruptcy Estate of Teresa G. Taylor, makes a Request for the Allowance of Fees and Expenses in this case. Reduced compensation for fees are requested for the period September 19, 2020, through June 29, 2021.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

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

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

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

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

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include auditing, asset analysis, asset disposition, and case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 11.40 hours in this category. Applicant reviewed documents, arranged for tenant buyout and move out, conducted escrow closing, cleaned out trash and removed refrigerator, and corrected IRS claim entries for TFR.

Accounting/Auditing: Applicant spent 9.80 hours in this category. Applicant arranged for and paid lock change, picked up escrow statement and deposited check, picked up Stanislaus county refund on taxes, and disbursed funds.

Asset Recovery: Applicant spent 11.30 hours in this category. Applicant sent letters, listed property for sale, showed property, made counteroffers, and drafted turnover demand letter to tenant.

Asset Disposition: Applicant spent 3.50 hours in this category. Applicant discussed sale price recommendations, managed counteroffers and responses, and discussed tenant exit.

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 \$202,616.57	\$10,130.83
Calculated Total Compensation	\$15,880.83
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$15,880.83
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$12,500.00

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$12,500.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

EXPENSES ALLOWED

First and Final Costs in the amount of \$2,433.00 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 7 case.

In this case, the Chapter 7 Trustee currently has \$30,890.51 of unencumbered monies to be administered. The Chapter 7 Trustee opened the case and entered data into the case management system, reviewed the petition, schedules, and statements, prepared for the 341(a) Meeting of Creditors, and conducted the Debtor's examination. Applicant's efforts have resulted in a realized gross of \$335,000.00 recovered for the estate. Dckt. 101.

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

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

Fees	\$12,500.00
Costs and Expenses	\$2,433.00

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

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

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

IT IS ORDERED that Gary Farrar is allowed the following fees and expenses as trustee of the Estate:

Gary Farrar, the Chapter 7 Trustee

Fees in the amount of \$12,500.00
Expenses in the amount of \$2,433.00,

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

2. [07-90770-E-7](#) **BELLA VISTA BY PARAMONT,** **MOTION TO COMPROMISE**
[08-9107](#) **LLC** **CONTROVERSY/APPROVE**
FARRAR V. WARDA AND YONANO, A **SETTLEMENT AGREEMENT WITH**
LIABILITY PARTNERSHIP **WARDA AND YONANO, A LIMITED**
LIMITED LIABILITY PARTNERSHIP
6-15-21 [88]

ADVERSARY PROCEEDING CLOSED:
06/30/2014

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 15, 2021. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.
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Filing and Service

Movant Trustee has filed this Motion to Approve Compromise in this Adversary Proceeding. However, this Motion is one seeking to compromise the rights and interests of the bankruptcy estate—the Chapter 7 Trustee administering and using property of the estate as permitted in 11 U.S.C. § 363.

Federal Rule of Bankruptcy Procedure 2002(a)(3) provides that a motion to approve a compromise must be served on “all creditors.” Federal Rule of Bankruptcy Procedure 9019(a) “gilds the lily,” adding:

Rule 9019. Compromise and Arbitration

(a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Though the Motion should have been filed in the bankruptcy case, not the adversary proceeding, the court considers whether all creditors have been served. The Certificate of Service documents that service was made on the following persons:

Attorney for Debtor:

Michael S. Warda, Esq.
WARDA & YONANO
2350 W. Monte Vista
Turlock, CA 95382
Telephone: 209.667.1889
Facsimile: 209.667.7809

Trustee:

Gary Farrar
P.O. Box 576097
Modesto, CA 95357

Donald Drummond Associates
One California Street, Suite 300
San Francisco, CA 94111-5405

Ross F. Carroll Inc.
8873 Warnerville Road
Oakdale, CA 95361-9411

Debtor:

Bella Vista By Paramount, LLC
P.O. Box 4878
Modesto, CA 95352

U.S. Trustee:

Office of the U.S. Trustee
Robert T. Matsui United State Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

JCW Cypress Homes Group LP
1015 16th Street
Modesto, CA 95354-1105

Ross F. Carroll, Inc.
c/o Donald M. Stevenson
311 E. Main Street, #302
Stockton, CA 95204-2904

Attorney for Defendants, Warda & Yonano,
LLP, et al (State Court action):

David J. Cook, Esq.
COOK COLLECTION ATTORNEYS, PLC
165 Fell Street
San Francisco, CA 94102

Cert. of Serv., Dckt. 93.

Looking at the Bankruptcy Case, the Master Mailing List filed by Debtor lists the following persons:

DONALD DRUMMOND & ASSOCIATES
ONE CALIFORNIA STREET, SUITE 300
SAN FRANCISCO, CA 94111

JCW CYPRESS HOMES GROUP, LP
1015 16TH STREET
MODESTO, CA 95354

ROSS F. CARROL, INC.
8873 WARNERVILLE ROAD
OAKDALE, CA 95361

WARDA & YONANO, LLP
2350 W. MONTE VISTA AVE
TURLOCK, CA 95382

07-90770; Cert. of Serv.; Dckt 4. This is consistent with the creditors listed on Schedule D and E/F.

Thus, it appears that though filed in the bankruptcy case, the requisite parties have been served with the Motion, allowing the court to proceed though it has been filed in the Adversary Proceeding.

REVIEW OF MOTION

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Warda & Yonano et al. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the release of any claims or causes of actions that were, or could have been, alleged in a complaint ("Complaint") that Movant filed in the Stanislaus Superior Court against Settlor, seeking to set aside voidable transactions to satisfy a \$60,396.17 judgment against Settlor. Dckt. 92, Exhibit D.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit D in support of the Motion, Dckt. 92):

- A. Contingent: This agreement is contingent upon the bankruptcy court's approval;
- B. Payment: In consideration of the releases, Settlor shall pay Movant \$15,000.00 no later than seven days after the Motion is granted;
- C. Dismissal with prejudice: In consideration of the payment to be made by Settlor, Movant will execute and file a Request for Dismissal with Prejudice of the entirety of the action.
- D. Release by Movant: Movant will release Settlor of any and all past, present, and future rights, actions, causes of action, damages, costs, etc., arising out of any and all known

and unknown injuries resulting or to result from any alleged act and/or omission on the part of Settlor, including each and every claim that was, or could have been, alleged in the Complaint.

- E. No admission: Settlor denies that they ever controlled or engaged in any fraudulent activity with respect to Bella Vista, LLC, or that any assets of Warda & Yonano, LLP were transferred without consideration.
- F. Waiver of Civil Code § 1542: The Parties expressly waive all rights to recover for any unsuspected, unanticipated or unknown matters which might have affected their settlement herein or the giving of this release.
- G. Construction of Agreement: The parties agree that nothing in this Agreement are or may be construed as an admission of any fault, negligence, wrongdoing, or violation of law, and that this Agreement shall be construed solely as a compromise and settlement of all disputes between the parties hereto.
- H. Successors and Assigns: The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- I. Attorney's Fees and Costs: Each party shall be responsible for the payment of its own court costs; attorney's fees and all other expenses in connection with the Action and matters referred to in this Release.
- J. Enforceability: This Agreement may be enforced pursuant to the terms of Section 664.6 of the Code of Civil Procedure of the State of California or by any other procedure permitted by law in the Superior Court of San Joaquin, State of California.
- K. Entire Agreement: This Agreement is the final written expression and complete and exclusive statement of all the agreements, conditions, promises and covenants between the Parties with respect to the subject matter hereof.
- L. Authority to Enter Agreement: The Parties hereto warrant that they have full power to carry out the transactions provided for in this Agreement.
- M. Advice of Counsel: The Parties represent and warrant that all of the terms, conditions, waivers, warranties and promises set forth herein are made after they have had an opportunity to consult with legal counsel of their choosing and with an understanding of their significance and consequence.
- N. Counterparts: This Agreement may be (but need not be) executed in counterparts and signatures delivered via facsimile or electronic transmission shall have the same force, validity and effect as the originals thereof.
- O. Severability: If any provision of this Agreement is found by a competent tribunal to be illegal, invalid, or unenforceable, that provision shall be fully severable, and in lieu thereof, such tribunal may add or substitute a provision as similar in terms and intent to the stricken provision as may be legally permissible.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

The subject of the settlement is a \$60,395.17 judgment entered in favor of Trustee and against Settlor. In answer to a Complaint to recover this judgment filed by Trustee, Settlor has argued an affirmative defense based on the statute of repose. Dckt. 90, ¶ 1. Although Trustee believes this defense is inapplicable, if trial court finds otherwise, Trustee cannot prevail. *Id.* Thus, in contrast to the risk of losing at trial, settlement ensures that Trustee can recover a portion of the judgment amount. *Id.*

Difficulties in Collection

The Trustee filed an unopposed Motion to Dismiss, which this court heard and denied without prejudice on April 28, 2016. *Id.*, ¶ 2. In its minute order, the Court found that “[t]he judgment against Warda & Yonano has limited value to the creditors of the estate,” and acknowledged “there is a sense of futility in pursuing collection.” *Id.* The Court also acknowledged that “even a partial recovery is better than 100% of nothing” in reference to the judgment against Settlor. *Id.* Trustee asserts the Agreement provides the Estate with the best path to collect on the Court’s judgment and provide additional monies to creditors. *Id.*

Expense, Inconvenience, and Delay of Continued Litigation

By resolving this case through the Agreement, the bankruptcy case will effectively be resolved. *Id.*, ¶ 3. Trustee would surely spend more in legal fees to complete discovery and proceed to trial than he would to solve the matter. *Id.* This factor weighs heavily in favor of approving this compromise because the case is administratively insolvent. *Id.*

Paramount Interest of Creditors

The settlement will allow the creditors to be paid sooner and without further risk. *Id.*, ¶ 4.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the risks and costs of going to trial outweigh the security and efficiency of resolving the matter through the Agreement. The Motion is granted.

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

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

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

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Warda & Yonano et al. (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit D in support of the Motion (Dckt. 92).

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 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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 17, 2021. By the court's calculation, 42 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 31-1 of Leo Arcos is sustained, and the claim is disallowed in its entirety.

Michael D. McGranahan, the Chapter 7 Trustee ("Objector"), requests that the court disallow the claim of Leo Arcos ("Creditor"), Proof of Claim No. 31-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$7,200.00. Objector asserts that the claim fails to allege facts sufficient to support Debtor's liability to Claimant.

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 evidence 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). Substantial evidence means such relevant evidence as

a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Here, Objector argues that Claim 31-1 fails to allege facts sufficient to support a finding that Debtors are the party liable to Claimant. Upon the filing of the voluntary petition, the petition created the bankruptcy estate of debtors Jamie Benjamin Billman and Melissa Marnell Billman, not the bankruptcy estate of Cool Roofing Systems, Inc. (“CRS”). CRS is a California corporation registered with the California Secretary of State with an Entity Number C2648120; thus, as a corporation, CRS is a different legal entity than Debtors.

A review of Proof of Claim 31-1 shows that there is nothing in the record for the court to conclude Debtor made any personal guarantee on the obligations of CRS. Absent such a contractual agreement between Debtor and Claimant, Debtor has no obligation for the debts of CRS. Claimant asserts that he is owed past due property rent for February, March, April, and May 2020. If that is the case, Claimant’s recourse is against CRS, not against Debtor.

Claimant states having a claim against CRS, but not the Debtor. Thus, Claimant has not alleged “facts sufficient to support the claim” against Debtor. Based on the evidence before the court, Creditor’s claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of Leo Arcos (“Creditor”), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 31-1 of Creditor is sustained, and the claim is disallowed in its entirety.

FINAL RULINGS

4. [20-90710-E-12](#) LESLIE JENSEN
[21-9002](#) CVW-1
OSMERS (MASELLIS) V. JENSEN ET
AL

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
6-14-21 [[21](#)]

Final Ruling: No appearance at the July 29, 2021 hearing is required.

Pursuant to Order of this Court (Dckt. 26), the hearing on the Motion to Dismiss Adversary Proceeding has been continued to 2:00 p.m. on September 30, 2021.

Final Ruling: No appearance at the July 29, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 21, 2021. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Anthony D. Johnston, the Attorney ("Applicant") for Irma C. Edwards, 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 14, 2018, through June 21, 2021. The order of the court approving employment of Applicant was entered on December 4, 2018. Dckt. 20. Applicant requests fees in the amount of \$4,700.00.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney / a professional 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 prosecuting an adversary action based upon a fraudulent transfer claim, which led to a court-approved compromise and general case administration services. The Estate has \$7,500.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 0.1 hours in this category. Applicant reviewed the claims registry.

Efforts to Assess and Recover Property of the Estate: Applicant spent 4.2 hours in this category. Applicant reviewed documents and held telephone conferences.

Adversary Proceedings: Applicant spent 64.1 hours in this category. Applicant successfully prosecuted the fraudulent transfer claim, including an initial review of documents and legal research, participation in discovery, preparation of a motion for summary judgment, and participation in a mediation session.

Fee/Employment Applications: Applicant spent 4.2 hours in this category. Applicant prepared the application for employment as well as the present application, including all supporting 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
Anthony D. Johnston	72.6	\$300.00	\$21,780.00
Total Fees for Period of Application			\$21,780.00

Costs & Expenses

Applicant waives the costs incurred, which total \$428.10.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of \$4,700.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of \$4,700.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees allowed by the court.

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

Fees	\$4,700.00
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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 Anthony D. Johnston (“Applicant”), Attorney for Irma C. Edwards, 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 Anthony D. Johnston is allowed the following fees and expenses as a professional of the Estate:

Anthony D. Johnston, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$4,700.00,

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

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

Final Ruling: No appearance at the July 29, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, creditors, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2021. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 7 Debtor, U.E. Construction Services Inc., (“Debtor”), seeks dismissal of the case on the grounds that the Chapter 7 filing was not viable as the Debtor corporation was dissolved on April 21, 2021, which was prior to the filing of the petition.

DISCUSSION

Under 11 U.S.C. § 707(a), a Chapter 7 case may be dismissed “only after notice and a hearing and only for cause.” In the Ninth Circuit, “a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no ‘legal prejudice’ to interested parties.” *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004) (quoting *In re Leach*, 130 B.R. 855, 857 (9th Cir. BAP 1991)). Debtor bears the burden of proving that dismissal would not prejudice its creditors. *Bartee*, 317 B.R. at 366.

Here, Debtor’s attorney testifies that Debtor corporation, U.E. Construction Services, Inc., was dissolved with the California Secretary of State in April 2021. Dckt. 8, ¶ 4. On June 9, 2021, Trustee Gary Farrar contacted Debtor to confirm that U.E. Construction Services, Inc., was ineligible for filing for Chapter 7 bankruptcy due to the dissolution of the corporation. *Id.*

**U.E. Construction Services, Inc. was eligible
to file a Chapter 7 case under Corp. Code § 2010(a)**

“Dissolution does not necessarily preclude a corporation from eligibility for bankruptcy: The eligibility of a dissolved corporation for relief under the Bankruptcy Code depends on the continuing existence of the corporation after the dissolution under the applicable local law. Similarly, whether a corporation is subject to an involuntary petition depends upon the law of the state in which it was incorporated.” *In re Ethanol Pacific, Inc.*, 166 B.R. 928, 930 (Bankr. D. Idaho 1994). Thus, U.E. Construction Services, Inc. was not automatically precluded from filing for bankruptcy protection due to corporate dissolution if its rights were preserved by applicable state law.

The rights of a corporation following dissolution “depends upon the law of its domicile”. *Macmillan Petrol. Corp v. Griffin*, 999 Cal. App. 2d 523, 528, 222 P.2d 69 (1950). U.E. Construction Services, Inc. was registered as a California corporation on April 8, 2019. As a California corporation, California law governs the dissolved corporation’s rights. California Corporation Code §2010(a) states “A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect or discharge obligations, [. . .], but not for the purpose of continuing business except so far as necessary for the winding up thereof.”

Here, U.E. Construction Services, Inc. entered into a voluntary Chapter 7 proceeding hoping to liquidate and discharge outstanding debts. The court believes the filing of a Chapter 7 proceeding is a type of proceeding allowed by the plain language of Corp. Code § 2010(a). Thus, it appears U.E. Construction Services was eligible to file its Chapter 7 petition.

The Chapter 7 Trustee recommended the dismissal of this case and the court infers the Trustee does not want to administer this bankruptcy estate. A review of the docket also shows no objections from creditors.

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 the Chapter 7 case filed by 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 Dismiss is granted, and the case is dismissed.