

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 15, 2019 at 10:30 a.m.

---

|    |                               |                     |                             |
|----|-------------------------------|---------------------|-----------------------------|
| 1. | <a href="#">17-20220</a> -E-7 | WILLIAM/FAYE THOMAS | MOTION TO COMPEL            |
|    | <a href="#">18-2090</a>       | Robert Putnam       | 7-3-19 <a href="#">[69]</a> |
|    | PUTNAM V. THOMAS, JR. ET AL   |                     |                             |

**Final Ruling:** No appearance at the August 15, 2019 hearing is required.

-----

The parties having filed a Stipulation for Withdrawal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion To Compel was dismissed without prejudice, and the matter is removed from the calendar.**

August 15, 2019 at 10:30 a.m.

Page 1 of 24

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

**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, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. Dckt. 347. The court set the hearing for March 21, 2019, requiring 9 days' notice. Order, Dckt. 338. 9 days' notice was provided.

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

-----

|   |
|---|
| <p><b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">XXXXXXXXXX</span>.</b></p> |
|---|

The Debtor in Possession, United Charter, LLC ("ΔIP"), moves for an order approving the use of cash collateral from ΔIP's real property identified as an industrial warehouse property located in Stockton, California ("Property"). Debtor in Possession requests the use of cash collateral to pay an average of \$7,785 per month of budgeted property-related expenses such as property taxes, insurance, utilities and maintenance that EWB had approved for payment.

### Stipulation

Along with the Motion, ΔIP filed a Stipulation between ΔIP, and creditors East West Bank ("EWB") and Wayne Bier ("Bier"). Dckt. 339. The Stipulation consents to the aforementioned expenses sought to be paid by ΔIP, as well as a variance of 10 percent in any individual line item expense as long as the total amount used does not exceed five percent of the monthly budget.

Pursuant to the Stipulation and as a adequate protection for the use of cash collateral, the ΔIP has offered, and EWB and Bier have agreed to accept:

(a) Replacement liens in post-petition rents to the same extent, and with the same validity and priority, as such lenders held in the cash collateral expended, to the extent the DIP's use of such cash collateral resulted in a reduction of such lender's secured claim; and

(b) Turnover to EWB of all net rents received between August 1, 2018 and May 31, 2019 after payment of the previously approved or to be authorized monthly and one-time expenses described in the Stipulation and this Motion.

### **Supplemental to Motion**

$\Delta$ IP filed a Supplement to the motion on May 17, 2019. Dckt. 400. The Supplement requests the following:

1. Authorization to use cash collateral for the monthly budgeted expenses of \$5,878 for the period of June 1, 2019 through August 31, 2019.
2. Upon the  $\Delta$ IP's filing of an amendment to the Supplement, determine the amounts necessary for tenant improvements to the remaining leased space.
3. Grant EWB and Bier the requested replacement liens.

The Supplement also provides a detailed overview of efforts to obtain contractor bids for the requested tenant improvements, that electrical plans may need to be acquired to solicit future bids, and notes there was a fire on one of the leased properties which losses will be entirely covered by insurance.

Because of the fire,  $\Delta$ IP's counsel states that the Supplement is incomplete and requests a continuance of the hearing in the event no amendment is filed prior to the hearing.

### **Limited Objection of EWB**

EWB filed a Limited Objection to the use of cash collateral on May 22, 2019. Dckt 402. EWB consents to  $\Delta$ IP's use of the cash collateral in the amounts necessary for maintenance, subject to EWB's review of the budgeted amount to be specified in further detail by  $\Delta$ IP. EWB notes no other amounts have been requested in the Supplement.

EWB notes further it has filed a motion for relief from the automatic stay set for hearing June 12, 2019 on the grounds there is no adequate protection.

EWB requests that if this Motion is granted, the order granting the Motion provide as follows:

1. EWB shall be granted a valid, duly perfected, enforceable and non-avoidable replacement lien and security interest of the same priority as EWB's prepetition lien, in all post-petition cash collateral, and

2. Entry of the court's order approving use of cash collateral shall constitute a validly perfected first lien and security interest upon the post-petition collateral and no filing, recordation or other act in accordance with any applicable local, state or federal law shall be necessary to create or perfect such lien and security interest.

### **Response of Bier**

Bier filed a Response consenting to the use of cash collateral for the monthly budgeted expenses of \$5,878 for the period of June 1, 2019 through August 31, 2019. Dckt. 404. Bier's consent is given on the condition the grant of a replacement lien in the post-petition rents in the same priority, validity, and extent as they existed in the cash collateral expended.

Bier notes he believes the Property is valued at \$7,230,000.00, and states he will be opposing the motion for relief filed by EWB.

### **MAY 30, 2019 HEARING**

At the May 30, 2019 hearing the court granted the motion in light of EWB consenting to the use of cash collateral for the monthly budgeted expenses through August 31, 2019. Civil Minutes, Dckt. 416.

### **AUGUST 15, 2019 CONTINUED HEARING**

The court continued the hearing on the Motion to Use Cash Collateral to August 15, 2019. No further pleadings have been filed or request made for the further use of cash collateral after the August 31, 2019 termination under the prior order.

### **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**

At the prior hearing, EWB had consented to the use of cash collateral for the monthly budgeted expenses through August 31, 2019. No further stipulation or pleadings have been filed in support of the continued use of cash collateral.

At the August 15, 2019 hearing, **XXXXXXXXXXXXXX**.

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

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

The Motion for Authority to Use Cash Collateral filed by Debtor in Possession, United Charter, LLC (“ΔIP”) 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 **XXXXXXXXXX**.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

|   |
|---|
| <p><b>The Motion to Sell Property is granted.</b></p> |
|---|

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell to the debtor, Alan Mercado's ("Debtor") the Bankruptcy Estate's nonexempt interest in property identified as a **2003 HS Hummer** ("Property").

The proposed purchaser price of the Property is \$9,000.00. An auctioneer evaluation estimated the value of the Property at \$12,000.00. Dckt. 29. In Amended Schedule C, Debtor claims an exemption of \$3,325.00 in the Property.

## DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the purchase price is the fair market value of the non-exempt interest in the Property.

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

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

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

**IT IS ORDERED** that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to the debtor, Alan Mercedo, or nominee (“Buyer” or “Debtor”), the Bankruptcy Estate’s interest in property identified as a 2003 HS Hummer(“Property”) for \$9,000.00.

**Final Ruling:** No appearance at the August 15, 2019 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 3, 2019. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 20, 2015 through August 15, 2019. The order of the court approving employment of Applicant was entered on March 2, 2015. Dckt. 248. Applicant requests fees in the amount of \$82,000 and costs in the amount of \$1, 750.00.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the



circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

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

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

### **Lodestar Analysis**

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

### **Reasonable Billing Judgment**

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

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

recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; asset analysis, recovery, and disposition; Fee and employment applications; business operations; and claims administration. The court finds the services were beneficial to Client and the Estate and were reasonable. This is a case in which the Trustee is preparing to distribute \$1,440,291.71, with there being a 78.2% dividend for creditors with general unsecured claims. Motion, p. 3:5-18; Dckt. 334.

## **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 26.5 hours in this category. Applicant During the case Wilke Fleury represented the Trustee in tasks required in the administration of the case. Wilke Fleury's attorneys reviewed court files, researched and evaluated the effect of reopening of the case on property of the estate, and filed and prosecuted motions for approval of administrative expenses, including taxes.

Efforts to Assess and Recover Property of the Estate: Applicant spent 103.4 hours in this category. Applicant spent 4 years advising Client regarding the Estate's interest in shares of two companies.

Asset Disposition: Applicant spent 25.6 hours in this category. Applicant analyzed company shares held by the Estate and prosecuted two motions to abandon.

Fee and Employment Applications: Applicant spent 34.9 hours in this category. Applicant represented the Trustee in obtaining the approval of retention of professionals and in preparing applications for authority to compensate these professionals; prepared applications to employ Wilke Fleury and special counsel Locke Lord; and prepared first interim and final fee applications for Sensiba San Fillippo, a final fee application for Locke Lord, and a final fee application for Wilke Fleury.

Business Operations: Applicant spent 18.10 hours in this category. Applicant prosecuted a motion for authorization of the payment of administrative expenses.

Claims Administration and Objections : Applicant spent 18.10 hours in this category. Applicant advised the Trustee with respect to evaluation and resolution of certain problematic claims

Post-Fee Application Services: Applicant performed services after this Application (reflected in supplemental pleadings (Dckts. 347, 348)), and estimated fees of \$3,018.50 for those services.

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:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Kevin R. Bonsignore                          | 27.9        | \$275.00           | \$7,672.50   |
| Branden Clary                                | 10.2        | \$225.00           | \$2,295.00   |
| Daniel L. Egan (2015/16)                     | 72          | \$395.00           | \$28,440.00  |
| Daniel L. Egan (2017)                        | 19.3        | \$405.00           | \$7,816.50   |
| Daniel L. Egan (2018)                        | 40.7        | \$415.00           | \$16,890.50  |
| Daniel L. Egan (2019)                        | 64.2        | \$435.00           | \$27,927.00  |
| Aaron Johnson                                | 1           | \$335.00           | \$335.00   |
| Megan A. Lewis                               | 0.7         | \$355.00           | \$248.50   |
| Steven J. Williamson                         | 1.6         | \$320.00           | \$512.00   |
| Estimated post-application fees              |             |                    | \$3,018.50   |
| <b>Total Fees for Period of Application</b>  |             |                    | \$95,155.50  |
| <b>Total Fees for Period of Application</b>  |             |                    | \$82,000.00 <sup>FN.1.</sup>                             |

-----  
FN.1. The fees listed above (as reflected in the Application (Dckt. 334 at p. 5:19-6:7.5)) are actually more than requested. In another chart in the Motion divided by task category, the total hours billed is roughly 30 hours less than all the hours reflected above. The court presumes the requested amount is for the time billed that payment is requested, and additional amounts are no-charge services.  
-----

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,750.00 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Cost</b>       |
|---|-------------------|
| Conference Calls                            | \$88.14           |
| Postage                                     | \$591.85          |
| Photocopies                                 | \$585.90          |
| Electronic Research                         | \$5.16            |
| Fedex                                       | \$25.46           |
| Additional costs through hearing            | \$453.49          |
| <b>Total Costs Requested in Application</b> | <b>\$1,750.00</b> |

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$82,000 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 \$1,750.00 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.

The court authorizes the Chapter 7 Trustee to pay the fees and costs 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               | \$82,000   |
| Costs and Expenses | \$1,750.00 |

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

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

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

The Motion for Allowance of Fees and Expenses filed by Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney (“Applicant”), for Michael D.

McGranahan, 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Professional employed by the Chapter 7 Trustee,

Fees in the amount of \$82,000

Expenses in the amount of \$1,750.00,

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 the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on June 10, 2019. By the court's calculation, 66 days' notice was provided. 28 days' notice is required.

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

|   |
|---|
| <p><b>The Motion to Approve Loan Modification is granted.</b></p> |
|---|

The Motion to Approve Loan Modification filed by the debtor in possession, Juanito W. Copero ("ΔIP") seeks court approval for ΔIP to make payments of \$1,617.58 to Ocwen Loan Servicing, LLC ("Creditor") pursuant to a trial loan modification.

The Bankruptcy Code permits the obtaining of credit or incurring of debt:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

The trial modification agreement is filed as Exhibit 1. Dckt. 42. This is the first step in the modification of the loan, with the Debtor in Possession making payments in an amount which will be the

modified loan, if final approval is granted.

The Motion is granted.

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

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

The Motion to Approve Loan Modification filed by the debtor, Juanito W. Copero (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the trial loan payments as provided in Exhibit 1 (Dckt. 42) are authorized.

Final approval of the loan modification is subject to further order of the court pursuant to a separate motion.

**Final Ruling:** No appearance at the August 15, 2019 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

**The Motion to Employ is granted.**

Susan K. Smith, the Chapter 7 Trustee ("Trustee") seeks to employ Bachecki, Crom & Co., LLP ("Accountant") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Accountant to prepare state and federal income tax returns for the Estate, as well as to provide other tax-related advice.

Trustee seeks to Employ Accountant on a flat fee basis for \$1,200.00.

Jay Crom, a certified public accountant of Accountant, testifies that he has extensive experience in tax preparation in bankruptcy cases. Dckt. 161. Crom testifies further he 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 Accountant, considering the declaration demonstrating that Accountant 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 Bachecki, Crom & Co., LLP as Accountant for the Chapter 7 Estate on the terms and conditions set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 162.

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

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

The Motion to Employ filed by Susan K. Smith, the Chapter 7 Trustee (“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 Employ is granted, and Trustee is authorized to employ Bachecki, Crom & Co., LLP as Accountant for Trustee on the terms and conditions as set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 162.

**IT IS FURTHER ORDERED** that Bachecki, Crom & Co., LLP is allowed the following flat fee as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the  
Chapter 7 Trustee

Fees in the amount of \$1,200.00

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 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.

**Final Ruling:** No appearance at the August 15, 2019 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 44 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><b>The Motion for Allowance of Professional Fees is granted.</b></p> |
|---|

Susan K. Smith, the Chapter 7 Trustee and Applicant ("Applicant") on behalf of her counsel, Desmond, Nolan, Liviach & Cunningham ("Counsel") makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 6, 2018, through June 28, 2019. The order of the court approving employment of Counsel was entered on September 12, 2018. Dckt. 116. Applicant requests fees in the amount of \$6,722.50 and costs in the amount of \$171.31.

## 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 Counsel’s services for the Estate include general case administration, asset and claims investigation, asset disposition, and fee and employment applications. The Estate has \$17,226.89 of unencumbered monies to be administered as of the filing of the application. Dckt. 165. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Counsel provides a task billing analysis and supporting evidence for the services provided (described in detail in the Application (Dckt. 164 at p. 3:15-4:1)), which are described in the following main categories.

General Case Administration: Counsel spent 1.2 hours in this category.

Asset and Claims Investigation: Counsel spent 7.2 hours in this category.

Asset Disposition: Counsel spent 12.6 hours in this category.

Fee and Employment Applications: Counsel spent 6.5 hours in this category.

The fees requested are computed by Counsel 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:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| J. Russel Cunningham                         | 1.9         | \$425.00           | \$807.50   |
| J. Luke Hendrix                              | 4.8         | \$325.00           | \$1,560.00   |
| Nicholas L. Kohlmeyer                        | 16.8        | \$225.00           | \$3,780.00   |
| Ryan Ivanusich                               | 3           | \$175.00           | \$525.00   |
| Courier                                      | 1           | \$50.00            | \$50.00  |

|   |                   |
|---|-------------------|
| <b>Total Fees for Period of Application</b> | <b>\$6,722.50</b> |
|---|-------------------|

### **Costs & Expenses**

Counsel also seeks the allowance and recovery of costs and expenses in the amount of \$171.31 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Cost</b>     |
|---|-----------------|
| Photocopies                                 | \$107.00        |
| Postage                                     | \$33.42         |
| Advanced Fees                               | \$30.89         |
| <b>Total Costs Requested in Application</b> | <b>\$171.31</b> |

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

The court finds that the hourly rates are reasonable and that Counsel effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$6,722.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

#### **Costs & Expenses**

First and Final Costs in the amount of \$171.31 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.

The court authorizes the Chapter 7 Trustee to pay of the fees and of the costs allowed by the court.

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

|                    |            |
|--------------------|------------|
| Fees               | \$6,722.50 |
| Costs and Expenses | \$171.31   |

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 Susan K. Smith, the Chapter 7 Trustee and Applicant (“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 Desmond, Nolan, Liviach is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Liviach, Professional employed by the Chapter 7 Trustee,

Fees in the amount of \$6,722.50

Expenses in the amount of \$171.31,

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

|   |
|---|
| <p><b>The Motion to Abandon is granted.</b></p> |
|---|

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

The Motion filed by J. Michael Hopper ("the Chapter 7 Trustee") requests that the court authorize him to abandon property identified as all personal property used in Debtor's cremation business located at Debtor's nonresidential real properties known as 3731 Sunset Lane, Suite 208, Antioch, California; 5555 Broadway Street, Suite 202, American Canyon, California; and 1510 Merkley Avenue, Suite 5, West Sacramento, California ("Property").

Debtor values the Property at \$1,195.00. Dckt. 9. Trustee has viewed the Property, and believes the value of the Property would not exceed the sale cost. Declaration, Dckt. 24.

### **Description of Property Abandoned**

The Motion seeks authorization to abandon personal property of the estate that is only generically described as "personal property used by Debtor in connection with its operation of a

cremation business at the Leased Premises.” Motion ¶ 3, Dckt. 22. The Motion uses a non-exclusive list of typical office equipment, but does not limit what is abandoned. The Trustee abandons every item of personal property “used by Debtor in connection with its operation of a cremation business.” This includes items listed on the Schedules and items not listed.

Conceivably this could include a box of gold, other precious metals, and jewels, which was used in the business to hold gold fillings and body piercing that were removed from the cremated remains.

This appears to include the \$1,500 Cadillac Hearse and the \$30,000 of stated equity in the Double Ended Cremator listed on Schedule A/B.

Schedule A/B lists what appears to be a number of insurance policies that appear to be personal property used in connection with the cremation business. These policies and any claims thereunder are personal property to 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 J. Michael Hopper (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the property identified as all personal property located at Debtor’s nonresidential real properties known as 3731 Sunset Lane, Suite 208, Antioch, California; 5555 Broadway Street, Suite 202, American Canyon, California; and 1510 Merkley Avenue, Suite 5, West Sacramento, California (“Property”) is abandoned to Acacia Cremation and Burial Society, Inc. by this order, with no further act of the Chapter 7 Trustee required.