

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

September 6, 2018 at 10:30 a.m.

1. [16-90603-E-7](#) **MARK ONE CORPORATION** **MOTION TO SELL**
[HSM-4](#) **Cecily Dumas** **8-16-18 [124]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2018. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

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

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Irma C. Edmonds, the Chapter 7 Trustee, (“Movant” or “Seller”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004. Here, Movant proposes to sell the remnant assets of the estate, including known or unknown assets and claims (“Property”), subject to any liens, claims, interests, or encumbrances thereon. Trustee is not aware of any assets actually within the Property.

September 6, 2018 at 10:30 a.m.

The proposed purchaser of the Property is John Sims as Trustee for the G & M Baker 1994 Trust (“Buyer”), and the essential terms of the sale are summarized as follows:

- A. Buyer will pay the purchase price of \$5,000.00 within 3 business days of receipt of by Buyer of the Agreement and the entry of a non-appealable Order of the court.
- B. Seller sells, assigns, transfers, and conveys to Buyer all of Seller’s right, title, and interest under, in, and to the Property, including related claims and rights, and all cash, securities, instruments, and other property that may be paid or issued in conjunction with the Property and all amounts, interest, and costs due under the Property.
- C. The sale of the Property shall be subject to any and all liens, claims, or encumbrances that may exist thereon.
- D. Buyer is not assuming the liabilities of the Property.
- E. Property does not include cash held by the Trustee for distribution, any and all goods as defined in section 9-102 of the Uniform Commercial Code, or the purchase price of the Property. Summarize Terms of Sale.

Exhibit A, Dckt. 128. The entirety of the terms are set forth within the agreement, filed as Exhibit A along with this Motion. *Id.*

PROPOSED OVERBID PROCEDURES

While Trustee does not believe there are alternative buyers, Trustee proposes the following overbid procedures:

- 1. Each interested buyer who ants to participate in the overbid process must notify the Trustee of its intention to do so in accordance with the Notice on or before the Response Deadline.
- 2. Each initial overbid for the Property must be at least \$6,000.00.
- 3. Each interested bidder must submit a cashier’s check to the Trustee in the amount of such interested bidder’s initial overbid.
- 4. Each subsequent overbid must not be less than \$1,000.00 greater than the initial overbid.
- 5. In the event a party other than the Buyer is deemed the winning bidder of the Property, such other party shall be required to purchase the Property under the same terms and conditions set forth in the Agreement.

Dckt. 124, ¶¶ 13(a)-(e).

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 sale will generate \$5,000.00 in funds for the Estate, whereas Trustee believes costs associated with any auction for the Property would exceed this value. Trustee is not aware of any actual assets within the Property, and does not believe there will be alternative buyers interested in purchasing the Property. Dckt. 126, ¶¶ 7, 10.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court, .

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not granted.

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

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

The Motion to Sell Property filed by Irma C. Edmonds, 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 Irma C. Edmonds, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to John Sims as Trustee for the G & M Baker 1994 Trust or nominee (“Buyer”), the Property commonly known as the remnant assets of the estate, including known or unknown assets and claims (“Property”) subject to any liens, claims, interests, or encumbrances thereon, on the following terms:

- A. The Property shall be sold to Buyer for \$5,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 128, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.

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

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

2. [16-90603-E-7](#) **MARK ONE CORPORATION** **MOTION FOR COMPENSATION BY**
[HSM-5](#) **Cecily Dumas** **THE LAW OFFICE OF HEFNER,**
 STARK & MAROIS, LLP FOR
 HOWARD S. NEVINS, TRUSTEES
 ATTORNEY(S)
 8-16-18 [118]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.
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Hefner, Stark & Marois, LLP, the Attorney (“Applicant”) for Irma C. Edmonds, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 30, 2016, through August 15, 2018. The order of the court approving employment of Applicant was entered on October 11, 2016. Dckt. 48. Applicant requests fees in the amount of \$67,901.00 and costs in the amount of \$980.50. However, Applicant has noted it agreed to voluntarily reduce its requested distribution to an amount determined by the Trustee, which will enable Trustee to be paid a full commission, to pay Trustee’s tax professional hired in this case, and to pay unsecured creditors in this case an amount equal to the Trustee’s commission.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th

Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis 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 communicating with interested parties, analyzing issues, engaging in discovery, investigating assets and transactions of the Estate,, and litigating state court actions and bankruptcy court matters. The Estate has \$74,691.20 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 29.70 hours in this category, including 5.20 hours billed at no charge. Applicant communicated with the Trustee regarding issues in this case; performed customary initiation services and review; prepared, filed, and served employment applications papers; communicated with interested parties regarding pre-petition taxes owed to the FTB; prepared questions for and attended the Modesto Meeting of Creditors; reviewed and discussed numerous 521 documents; performed limited services in favor of a Motion for Relief of Stay; and drafted and performed all required services in connection with this Application.

Asset Investigation Applicant spent 33.80 hours in this category. Applicant investigated pre-petition transactions, including the sale of all its assets (skilled nursing/rehab businesses) to a buyer for what appeared to be no net profit. For this matter, Applicant made and followed up on requests/demands for information and documentation from parties, including Debtor, Debtor's Principals, Debtor's general and bankruptcy counsel, and certain creditors. Applicant also reviewed documents, communicated with involved

parties, investigated lending and repayment transactions (resulting in the settlement of a potential avoidance of a \$100,000.00 preference).

Asset Disposition: Applicant spent 21.00 hours in this category, including 1.50 not charged. Applicant communicated with the Trustee, counsel for the Sims/Baker Trust, and creditor's counsel regarding a settlement of estate claims, including a potential preference claim and other state claims; analyzed issues regarding a settlement and sale agreement ultimately reached; reviewed issues raised by the court related to section 544 of the Bankruptcy Code and performed limited research; and performed services for the remnant assets sale.

Claims: Applicant spent 7.60 hours in this category. Applicant reviewed and analyzed legal and factual issues relating to proofs of claim, some of which reached millions in asserted claims. The claims included the claims of California Department of Health Care Services / the State Self-Insured Security Fund, and Liberty Mutual Insurance.

Discovery: Applicant spent 1.60 hours in this category. Applicant performed limited 2004 discovery served in this case for creditor Burger Physical Therapy.

Litigation: Applicant spent 89.60 hours in this category. Applicant advised the Trustee in connection with state court litigation commenced prepetition, by a party against Debtor. Additionally, Applicant advised Trustee on and assisted in prosecuting the Estate's preference complaint against the Sims/Baker Trust, reviewed the strengths of defenses asserted in the case, drafted and filed the complaint, participated in a discovery conference, performed work for a discovery plan, made initial disclosures, researched litigation issues, attended status conferences, and reviewed and analyzed discovery received. Applicant also performed review, analysis, and work for the state court complaint filed by Burger Physical Therapy directed at Sims/Baker Trust, including litigation around motions filed after the action was removed to this court.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. While Applicant's billing rates varied even among the same individual attorneys, Applicant alleges the average billing rate was roughly \$370.44. The persons providing the services, the time for which compensation is requested, and the court's estimate of hourly rates are:

Names of Professionals	Time	Average Hourly Rate Per Biller	Total Fees Computed Based on Time and Hourly Rate
A. Avery	31.85	\$326.43	\$10,397.00
H. Nevins	140.70	\$408.70	\$57,504.00
Total Fees for Period of Application			\$67,901.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$980.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copy charges		\$646.25
Mileage		\$81.00
Postage		\$72.25
Court Filing Fees		\$181.00
Total Costs Requested in Application		\$980.50

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 \$67,901.00 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. Applicant has agreed to voluntarily reduce its fees in such amount as determined reasonably appropriate by the Trustee.

Costs & Expenses

First and Final Costs in the amount of \$980.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$67,901.00
Costs and Expenses	\$980.50

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

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

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

The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP (“Applicant”), Attorney for Irma C. Edmonds, the Chapter 7 Trustee, (“Client”) having

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

IT IS ORDERED that Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$67,901.00

Expenses in the amount of \$980.50,

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.

3.

[18-90030](#)-E-11
[STJ-12](#)

FILBIN LAND & CATTLE
CO., INC COLLATERAL
Michael St. James

MOTION TO USE CASH
8-23-18 [[284](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 23, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is not authorized, and the hearing is continued to xx:xx a.m. on xxxx, 2018, in light of the need to pay necessary expenses for further consideration (whether with the Debtor in Possession or a trustee).

Filbin Land & Cattle Co., Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral generated from rents of its property located adjacent to the Ingram Creek Road exit from Interstate 5 in the area of Westley, California ("Property") on a retroactive basis for the period of January 17, 2018, through the date of this hearing and up to November 30, 2018. Debtor in Possession requests the use of cash collateral for the immediate preservation of its estate and collateral.

Debtor in Possession provides an overview of the expenses, alleged as necessary for the preservation of its estate, as follows:

	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18
Contractors			\$1,200.00	\$600.00	\$10,387.00	\$5,363.00	\$1,150.00
Deposits							\$2,475.00
Maintenance & Repair						\$1,624.00	\$19.00
Meals				\$148.00	\$343.00	\$149.00	\$122.00
Misc. (incl Bank Fees)	\$45.00	\$40.00	\$379.00	\$32.00	\$367.00	\$7.00	\$3.00
Office Supplies /Other	\$107.00	\$71.00	\$270.00	\$421.00	\$824.00	\$579.00	\$22.00
Personal Property Lease					\$5,025.00		
Transportation/Gas			\$75.00	\$119.00	\$381.00	\$301.00	
US Trustee Fees				\$325.00		\$325.00	
Utilities & Ins			\$278.00	\$625.00	\$4,367.00	\$2,356.00	\$837.00
Total	152.00	111.00	2,202.00	22,70.00	21,694.00	10,704.00	4,628.00

Debtor in Possession further proposes to use cash collateral for the following expenses after this hearing:

	September- 18	October-18	November-18	3-Month Total
Cash-In	\$7,500.00	\$7,500.00	\$7,500.00	\$22,500.00
U.S. Trustee Quarterly Fees		\$325.00		\$325
Contract Labor	\$1,925	\$1,725	\$1,925	\$5,575

Fuel Usage	\$300	\$300	\$300	\$900
Insurance	\$2,900	\$2,900	\$2,900	\$8,700
Office Labor	\$900	\$900	\$900	\$2,700
Maintenance	\$250	\$250	\$250	\$750
Utilities	\$600	\$600	\$600	\$1,800
Office Supplies	\$100	\$75	\$100	\$275
Meals	\$200	\$100	\$200	\$500
Transportation/Gas	\$175	\$175	\$175	\$525
Misc. (incl Bank Fees)	\$150	\$150	\$150	\$450
Total	\$7,500	\$7,500	\$7,500	\$22,500

APPLICABLE LAW

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

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

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

(b)(2) Hearing

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

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for the ongoing expenses of the Estate.

The Motion seeks prospective authorization to use cash collateral for the months of September, October, and November, 2018.

This Motion also seeks retroactive authorization for the months of:

January 2018,

February 2018,

March 2018,

April 2018,

May 2018,

June 2018,

and

July 2018,

which are all of the months that this case has been pending, except for August 2018.

No request is made for the use of cash collateral during the month of August 2018.

A review of the Motion discloses that no grounds are stated with particularity (Fed. R. Bankr. P. 9013), or even obliquely, upon which the court is requested to grant retroactive relief. The Motion appears

to “assume” that if the demand for relief is made upon the court, then the court will be obliged to sign whatever order is demanded from the Debtor in Possession and its various counsel.

The Declaration of Jeffery Arambel filed in support of the Motion for Retroactive Authorization provides no testimony concerning the unauthorized use of cash collateral. Mr. Arambel provides the court with his “future plans” for the property of the bankruptcy estate.

This Motion is not being considered in a vacuum. Mr. Arambel has been challenged in fulfilling his duties as the responsible representative in this case and as the debtor in possession in his own case, 18-90029. Inaccurate Schedules were signed by Mr. Arambel under penalty of perjury. Mr. Arambel eschewed the hiring of a real estate professional to market properties of the bankruptcy estates to be sold, instead, as the fiduciary to both bankruptcy estate, electing to just do it himself.

The court has repeatedly addressed with Mr. Arambel and his various attorneys these “shortcomings,” repeatedly giving them all the benefit of the doubt in light of the large tracks of real estate in this case and the efforts by some creditors to stymie the bankruptcy process.

In this case, Mr. Arambel tried to get this court to approve the sale of 10 acres of real property to Boyette Petroleum on July 19, 2018. Motion, Dckt. 194. The proposed sales price was \$2,565,000. As discussed in the Civil Minutes, the sales documents (which Mr. Arambel and his attorneys prepared without the assistance of a real estate professional) were not between the Debtor in Possession and the proposed buyer, but the Debtor personally. Civil Minutes, Dckt. 236, p. 3.

At the hearing, the Debtor in Possession took a fallback position, that the Motion to “Sell,” was really and merely a motion to get preliminary approval of the contract, with the actual hearing on the Motion to Sell to be conducted another day. The court did not find this contention to be credible as it is not the practice in the bankruptcy courts in the Eastern and Northern Districts of California to conduct piecemeal hearings on motions to sell property of the bankruptcy estate.

The court also determined that Mr. Arambel could not serve as the Estate’s “real estate professional,” but that as the fiduciary of the bankruptcy estate Mr. Arambel had to hire the necessary professionals and could not merely continue to do business as he had for the prior 25 years. FN.1.

FN.1. In connection with the sale of real property in his own Chapter 11 case, Mr. Arambel provided testimony, as the Debtor in Possession, which the court understood to be that Mr. Arambel did not need to hire real estate professionals as he had 25 years of experience in running his businesses. As the court addressed orally on the record at the hearing, the Debtor in Possession telling the court that his high level of business sophistication and experience allowed him to eschew hiring professionals, in light of those business practices putting that Debtor and his corporation (Filbin Land & Cattle, Co.) into bankruptcy were not a ringing endorsement of those business skills.

The court continued the hearing on the Motion to Sell the 10 acres, and at the August 30, 2018, continued hearing, with the assistance of the real estate professional, the courtroom was packed with

interested parties, an initial overbidder appeared, and robust bidding ensued with the final sales price being \$8.35 million, with back-up buyers for \$8.3 and \$8.1 million approved by the court.

The Debtor in Possession, and Mr. Arambel as the responsible representative, and the attorneys he has engaged, continue to make it clear that Mr. Arambel will do what he wants, that the Bankruptcy Code (and making statements under penalty of perjury) do not limit his actions, and that since he demands retroactive authorization, the court will rubber stamp an order for him.

As the court noted at the August 30, 2018, status conference, no monthly operating reports had been filed with the court until a “bunch” for January through July 2018 were filed on August 23, 2018. This is in a Chapter 11 case where the monthly revenue is only \$7,100. The court noted at the continued August 30, 2018, hearing on the Motion to Sell that it would appear that the financial professionals, Mr. Arambel as the responsible representative of the Debtor in Possession, and the attorneys intentionally withheld the monthly operating reports and filing of a motion to use cash collateral until the eve of the continued hearing, trying to hide the unauthorized use from the court. The court’s note stands despite counsel for the Debtor in Possession repeatedly assured the court that such was merely coincidence and the preparation of the Monthly Operating Reports was “very complex.”

When the court pressed counsel for the Debtor in Possession how such experienced general bankruptcy counsel (who joined the case in March 2018) and special bankruptcy counsel (who has been in the case since January 2018, but the court would not authorize such special counsel to serve as general bankruptcy counsel for the two debtors in possession in the two related cases) could have let the use of cash collateral inadvertently slip, no credible response was provided, with the court being told, “we didn’t know.”

The Debtor in Possession has not given the court any basis for the retroactive relief requested. The Debtor in Possession has not shown the court that grounds exist to allow the Debtor in Possession to use cash collateral prospectively. What the Debtor in Possession has shown the court is that it and its responsible representative stay true to their course, do whatever they want, say whatever they believe to be to their advantage, and expect the creditors, U.S. Trustee, and federal judicial system to bend to their demands.

The court continues the hearing to **xx:xx x.m. on xxxx, 2018, xxxxxxxxxxxxxxxxxxxxxxxx**

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 Filbin Land & Cattle Co., Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Retroactive and Prospective Authorization to use cash collateral is continued to **xx:xx x.m. on xxxx, 2018.**

4. [16-90736-E-7](#)
[TBG-11](#)

RONALD/SUSAN SUNDBURG
Edward Smith

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
8-14-18 [\[216\]](#)

Discharged: 8/24/18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 15, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Ronald Charles Sundburg and Susan Cumming Sundburg ("Debtor") commonly known as 7634 Adams Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,248.35. An abstract of judgment was recorded with Calaveras County on May 3, 2013, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$375,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$409,152.88 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 212. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 212.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ronald Charles Sundburg and Susan Cumming Sundburg ("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 judgment lien of Citibank, N.A., California Superior Court for Calaveras County Case No. 12CF10662, recorded on May 3, 2013, Document No. 2013-6601, with the Calaveras County Recorder, against the real property commonly known as 7634 Adams Road, Valley Springs, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. [16-90736-E-7](#)
[TBG-12](#)

RONALD/SUSAN SUNDBURG
Edward Smith

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
8-14-18 [\[221\]](#)

Discharged: 8/24/18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 14, 2018. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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, -----.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Ronald Charles Sundburg and Susan Cumming Sundburg ("Debtor") commonly known as 7634 Adams Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$18,713.47. An abstract of judgment was recorded with Calaveras County on January 27, 2014, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$375,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$409,152.88 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 212. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. Dckt. 212.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ronald Charles Sundburg and Susan Cumming Sundburg ("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 judgment lien of Citibank, N.A., California Superior Court for Calaveras County Case No. 12CF10663, recorded on January 27, 2014, Document No. 2014-849, with the Calaveras County Recorder, against the real property commonly known as 7634 Adams Road, Valley Springs, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Cont. 8/23/18

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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.

The Motion to Avoid Judicial Lien is XXXXXXXXXX.
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REVIEW OF THE MOTION

This Motion requests an order avoiding the judicial lien of Helen McAbee ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$770,000.00. An abstract of judgment was recorded with San Benito County on May 27, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total \$1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has

claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....(\$925,557.92).....First Deed of Trust (2005)

Michael Abramson.....(\$265,411.00).....Deed of Trust (2009)

Goss and Goss.....(\$ 16,000.00).....Deed of Trust (2009)

Homestead Exemption.....(\$ 75,000.00)

Total consensual liens and homestead exemptions.....(\$1,281,968.92)

Value of Property Testified to by Debtor.....\$1,160,027.00

Value/(No Value) for Judgment Liens.....(\$ 121,941.92)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

AUGUST 23, 2018 HEARING - CONTINUANCE

At the August 23, 2018, hearing Helen McAbee ("Creditor") appeared through counsel and stated her opposition to the Motion. Dckt. 159. The main basis of the opposition being that Creditor asserted that the property against which she has a lien has a value of at least \$1,600,000. Further, she questions the validity of the obligation and deed of trust asserted by Debtor's father.

Bernadette Cattaneo, Debtor's ex-spouse ("Ex-Spouse") also appeared asserting that she had standing to litigate creditor's rights since she also has liability on the underlying debt and the Ex-Spouse's property is also encumbered by a judicial lien. The court having Creditor, the real party in interest having the judgment lien which is the subject of this litigation, before it, Ex-Spouse's assertion of standing was not persuasive. Counsel for Ex-Spouse will consider the issue further and develop the asserted basis for Ex-Spouse having standing to litigate the rights and interests of Creditor in the context of this Motion.

Even at \$1,600,000, it appears that not all of creditor's lien can be protected based on the senior liens and homestead exemption.

The parties agreed to a continuance so they could address the issues, arrange for appraisals, and propose a discovery schedule in the event that they cannot resolve the matter and an evidentiary hearing on value is required.

DISCUSSION

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Andreas Abramson (“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 ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

7.	<u>10-94467</u> -E-7 <u>MF-3</u>	TINA BROWN Michael Germain	MOTION FOR ADMINISTRATIVE EXPENSES 8-16-18 <u>194</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

The Motion for Allowance of Administrative Expenses 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 Administrative Expenses is granted.
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The Chapter 7 Trustee, Michael D. McGranahan (“Movant”), requests payment of administrative expenses in the amount of \$6,007.50 plus a variance up to 5% (\$300.38) to cover costs necessary for the sale of Tina M. Brown’s (“Debtor”) property commonly known as 17480 High School Road in Jamestown, California (the “Property”).

The Motion and Declaration of Michael McGranahan (Dckts. 194, 196) provide the following context for this Motion:

1. On February 24, 2012, the Trustee commenced an adversary proceeding before this Court by filing a complaint against Timothy Brown for turnover of certain real property in McGranahan v. Brown, Adv. Proc. No. 12-09003-E.
2. On June 29, 2018, the Court entered an order for the United States Marshal to sell the Property (Dckt. 107). The Court further ordered that the property be sold for at least 90% of its appraised value (\$355,000.00), which is \$328,500.00.
3. The Marshal requires an advance deposit for its commission of 1.5% of the gross proceeds, which will be \$4,927.50 based upon the minimum bid
4. The Marshal will publish notice of the sale but is not required to advertise the sale any further. California Code of Civil Procedure § 701.555 provides that a judgment creditor may advertise independently in a newspaper or other publication and is entitled to recover the reasonable costs of the extra advertising from the sale. The Trustee has obtained the following quotes for advertising the sale in the classified sections of the following newspapers:

Sonora Union Democrat:	\$245.00
Modesto Bee:	\$167.00
Sacramento Bee:	\$153.00
Fresno Bee:	\$515.00
Total:	\$1,080.00

5. The Trustee proposes to advertise the sale in all four of the aforesaid newspapers. With the Marshal’s deposit, the Trustee proposes to use a total \$6,007.50. The estate is in possession of cash in the amount of \$23,160.98.

DISCUSSION

Movant argues it is necessary to pay the Marshal’s deposit in order to carry out the sale. Movant also argues it is important and necessary to advertise the sale in order to attract qualified bidders and meet the aforesaid threshold of 90% of appraised value.

Movant requests allowance of the Marshall’s deposit and advertisement costs as administrative expenses and authority to pay such expenses up to \$6,007.50 plus a variance up to 5% (\$300.38) in case the final price differs slightly from the quote.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate” Here, Movant is providing for costs necessary for the sale of the Property, which will generate funds for the estate. Movant has explained that the sale cannot proceed without the Marshall’s deposit, and that failure to properly advertise the sale could result in the sale not meeting the threshold value required for sale.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing the Marshall’s deposit and advertisement costs pursuant to the sale of the Property is necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of \$6,007.50.

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 Allowance of Administrative Expense filed by Michael D. McGranahan (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the \$6,007.50 plus a variance up to 5% (\$300.38) as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

8. [17-90768-E-7](#)
[HSM-2](#)

PRO SOCCER, INC.
Steven Altman

MOTION TO COMPROMISE
CONTROVERSY / APPROVE
SETTLEMENT AGREEMENT WITH
PRO SOCCER, INC. AND/OR
MOTION TO SELL, MOTION FOR
RELATED SETTLEMENT AND
SALE AGREEMENT
8-16-18 [\[26\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

-----.

The Motion for Approval of Compromise is granted.
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Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with:

Adolfo S. Gregorio,
Bronek Gasior,

Michael Gasior,
David Gregorio,
Lucy Gregorio,
Soccer Pro, a California Corporation, and
Fresno Pro-Soccer Sports Zone, Inc., a California Corporation

(collectively “Settlor”).

The proposed agreement between the parties is a full settlement of all claims and causes of action between the Trustee and the Estate against Settlor (the “Disputes”). Among the claims and disputes to be resolved by the proposed settlement are violations of the Business and Professions Code section 17200, constructive fraud, misappropriation of funds/improper distribution, and conversion, all currently brought against Settlor within a complaint filed in the Superior Court of California, County of Stanislaus, Case No. 2011837 (the “Complaint”).

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 29 (the “Agreement”)):

- A. Settlor shall pay Movant \$12,500.00 (“Settlement Payment”) in exchange for (1) release or waiver of Trustee and Estate’s disputes in favor of Settlor, and (2) Settlor’s purchase from the Estate of the Estate’s interest in the Disputes. The Settlement Payment shall be delivered and made payable to “Irma C. Edmonds, Trustee of the Pro Soccer, Inc. Estate” within 7 business days of the complete execution of the Agreement by the Movant and Settlor. Trustee acknowledges receipt of the Settlement Payment.
- B. Trustee assigns and transfers all right, title, and interest of the Estate in the Disputes to the Settlor.
- C. The Estate’s interest in the Disputes is being sold “As-Is,” subject to any liens or encumbrances.
- D. The Trustee agrees on behalf of the Estate to release Settlor of all claims, .
- E. Trustee specifically waives the benefit of the provisions of section 1542 of the California Civil Code.
- F. Within 7 days of receipt of the Settlement Payment, Trustee shall file a motion with the bankruptcy court for approval of the Agreement and sale of assets therein. The Agreement is contingent on a final order approving the Agreement and sale of assets.
- G. The sale of the Estate’s interest in the Disputes is subject to overbidding at the hearing on this Motion. The Trustee will request any initial overbid amount to be \$15,000.00, with any subsequent overbids increasing, at minimum, by \$500.00

increments. Trustee will require any prospective overbidder to (1) demonstrate financial ability to complete its purchase of the Estate's interest in the Disputes, if successful, and provide evidence showing financial ability at least 2 court days prior to the hearing on the Motion; and (2) deposit with Trustee at or before the hearing the sum of \$15,000.00 in certified funds as a good faith deposit, which shall be retained by the Estate as liquidated damages if the qualified overbidder is the high bidder but fails to close its purchase of the Estate's interest in the Disputes for any reason other than a breach of the terms of the Agreement by Trustee.

- H. If Settlor is outbid at the hearing on the Motion, Settlor has the option of terminating the Agreement or maintaining the Agreement as a backup buyer in the event the overbidder fails to close the overbid purchase. If Settlor fails to make an election on the record at the hearing on the Motion, Settlor is deemed to have chosen to maintain the Agreement as a backup buyer.
- I. If Settlor is the successful overbidder, the Settlement Payment will be that overbid price. If another party is the successful overbidder, that overbidder shall be obligated to purchase the Estate's interest in the Disputes within 5 days after entry of Approval by the court.
- J. If the Settlor is the successful overbidder and thereafter fails to close due to breach by Settlor, the Estate shall only be entitled to the Settlement Payment as liquidated damages; the Estate waives its right to seek other remedies against Settlor.
- K. The Settlement Payment is refundable to Settlor if (1) the Motion is not granted, (2) Settlor is outbid on the Estate's interest in the Disputes and does not elect to maintain the Agreement as a backup buyer, or (3) the Estate fails to perform under the Agreement.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

The proposed settlement permits Movant to immediately list for sale and then sell the Estate's interests in all claims and causes of action between the Trustee and the Estate against Settlor. In exchange for waiver of claims, Trustee is receiving \$12,500.00 in funds for the Estate, with the possibility for higher amounts in the event of a successful overbid.

Probability of Success

Movant argues the probability of success is not great because, as with all trustee's litigation, this is "inherited" litigation, because she was not successful in retaining counsel for the case, and because the case presents possible evidentiary difficulties.

Movant does not actually discuss the merits of the case, but rather explains several practical difficulties attendant to the litigation. Movant states she has not been able to retain counsel, but does not elaborate further (presumably this is an assertion by the Trustee that she does not believe she will be able to retain counsel, or that the merits of the case are not great). Movant states that witnesses might not testify in support of the Estate's claims and other evidentiary issues are present.

These factors weigh in support of approving the compromise. When a trustee is appointed, the debtor has the opportunity to work with the trustee to advance claims and rights of the estate. Often the debtor, and its principals of the debtor are the key witnesses. But if they choose not to cooperate or help the trustee maximize the recovery for the estate, that can limit the trustee's ability to recover on the claim.

On Schedule A/B Debtor listed this claim as having a possible value of \$60,000 (with the qualifying statement that it was the subject of investigation). The proposed settlement appears to take into account the probability of success in connection with the other factors.

Difficulties in Collection

Movant states the "collection" factor is in favor of approving the Agreement because the Settlement Payment has already been received. This characterization mis-frames the consideration. It is not how easy will it be to collect the settlement amount, but difficulty in collection if the claims are litigated and the trustee wins "the whole enchilada." At best for Movant, this factor may be neutral.

Complexity, Expense, Inconvenience, and Delay of Continued Litigation

Movant reasserts the same issues discussed with the "probability of success" factor, and adds that she is to some extent uncertain about the possible complexities of the case because the case has not been

“worked up” and Debtor’s former counsel for the state court actions has not been responsive. Movant also adds that the Agreement is intended to offset possible expense, inconvenience, and delay of continued litigation.

Interestingly, one of the factors pointed to by the Movant is that the counsel of record in the state court action for these claims of the estate has failed or refuses to communicate with the Trustee or Trustee’s counsel. This factor may well tie to the likelihood of success and difficulties in collection, in that if the attorney of record, the person whom owes a fiduciary and professional duty to the Debtor requiring s/he not act in a manner to harm Debtor’s rights, which are now property of the bankruptcy estate, will not communicate, it indicates that there would be a long, hard row to hoe in pursuing this litigation. FN.1.

FN.1. This also may raise an issue as to what other rights the estate may have concerning the representation of these interests in the state court action.

As discussed in the declaration, the Debtor commenced this action on October 23, 2014 in the Superior Court. That was three year before the commencement of this bankruptcy case. Declaration, ¶ 3, Dckt. 28. From the stated cause of action, “serious” claims were stated, and presumably the Debtor and the state court counsel attempted to diligently prosecute these claims.

It is now September 2018. For all of Debtor’s efforts, for three years it tried but did not bring the state court action to conclusion. The Movant has now had a year to try and assert these rights, have the Debtor and state court counsel provide the required information and help advance the claims. It appears that the Movant has made an informed business judgment on these factors, bringing this matter to a settled conclusion. It appears that at the least delay of continued litigation is significant here. Therefore, this factor is in favor of approving the Agreement.

Paramount Interest of Creditors

Movant argues “the paramount interests of the creditors are also served by the Agreement. The Estate will receive the net benefits of the settlement and sale of its interests in the Disputes, with minimized expense and delay.”

The Agreement would immediately settle the Disputes and provide funds of at least \$12,500.00. The settlement brings to a conclusion four years of litigation. The settlement recovers \$12,500 in net monies for the estate. The Trustee can then proceed with the administration of this case. Creditors and the Debtor have been afforded the opportunity to assist the Movant, support the Movant, and provide additional information to assist Movant in pursuing the litigation rather than settling. The court cannot say the Movant’s determination on this point is unreasonable and not supported by the evidence presented.

Conclusion

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise and sale is in the best interest of the creditors and the Estate. The Motion is granted.

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

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

The Motion to Approve Compromise/ Motion to Sell filed by Irma C. Edmonds, 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/Motion to Sell is granted, and Movant is authorized to compromise and sell the interests of the bankruptcy estate in the “Disputes,” as stated in the Settlement and Sales Agreement (“Settlement Agreement”) filed as Exhibit A in support of the Motion (Dckt. 29) with and against Adolfo S. Gregorio, Bronek Gasior, Michael Gasior, David Gregorio, Lucy Gregorio, Soccer Pro, a California Corporation, and Fresno Pro-Soccer Sports Zone, Inc., a California Corporation, and each of them, on the terms as conditions stated in the Settlement Agreement, as modified by any further provisions of this order.

9. [16-90083-E-7](#) **VALLEY DISTRIBUTORS, INC.**
[SSA-20](#) **Iain Macdonald**

**MOTION FOR
COMPENSATION FOR
JOSEPH WOICIK,
CONSULTANT
8-15-18 [345]**

Final Ruling: No appearance at the September 6, 2018 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2018. By the court’s calculation, 22 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.

Upon review of the Motion and the modest amount of fees requested, \$270.00, the court determines that the appropriate “notice and hearing” (11 U.S.C. § 102) is the notice having been given, without causing the parties to have to appear and incur more in time to present the motion than that for the fees requested.

The Motion for Allowance of Professional Fees is granted.

Joseph Woicik, the Computer Consultant (“Applicant”) for Irma C. Edmonds, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 4, 2017, through August 3, 2018. The order of the court approving employment of Applicant was entered on May 11, 2017. Dckt. 305. Applicant requests fees in the amount of \$270.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include on-site consultations on June 17, 2017, and August 12, 2017, assisting the Trustee with accessing Debtor's computer and financial records. Trustee took possession of the Debtor's servers in an attempt to assess possible preferences or fraudulent conveyances, but had previously been unable to access the records with the access-information provided. Trustee subsequently sought and received court approval to employ Applicant for the work performed herein. Dckt. 305. 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 4.5 hours in this category. Applicant provided on-site consultations on June 17, 2017, and August 12, 2017, assisting the Trustee with accessing Debtor's computer and financial records.

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
Joseph Woicik	4.5	\$60.00	\$270.00
Total Fees for Period of Application			\$270.00

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 \$270.00 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 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 \$270.00

pursuant to this Application as first and 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 Joseph Woicik (“Applicant”), Computer Consultant for Irma C. Edmonds, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Joseph Woicik, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$270.00,

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