UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 28, 2017, at 10:30 a.m.

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1. **16-90500-E-11** **ELENA DELGADILLO**
HSM-15 **Len ReidReynoso**

MOTION TO SELL FREE AND CLEAR OF LIENS, MOTION TO PAY AND MOTION FOR COMPENSATION FOR COLDWELL BANKER RESIDENTIAL BROKERAGE, REALTOR(S)
8-24-17 [219]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2017. By the court's calculation, 35 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.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Irma Edmonds, the Chapter 11 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 5319 Bankcroft Avenue, Oakland, California ("Property").

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

A. The Purchase Price for the Property is $370,000.00.

B. Buyer has deposited $6,000.00 into escrow to be creditable against the Purchase Price and is non-refundable after satisfaction of all Buyer's conditions to closing. If the purchase fails to close, the deposit will be retained by Movant as liquidated damages.

C. Buyer will pay Purchase Price and close escrow on or before fifteen days after the filing of the court's order approving this Motion. Buyer will also pay its allocated costs of the sale, pursuant to the Purchase Agreement, on the Closing Date.

D. Movant shall pay its allocated costs of the sale, pursuant to the Purchase Agreement, on the Closing Date.

E. Movant shall pay her prorated share of real property taxes and assessments secured against the Property (including the costs to cure any delinquencies related thereto) and utilities related to the Property.

F. Movant shall retain a reserve for, or agree to withholding from the sale proceeds, any amounts required to be paid or withheld for state or federal taxes arising from the sale, with such funds being free and clear of liens following the closing of the sale.

G. Buyer's obligation to purchase the Property is contingent upon:

1. Buyer's review and approval of title to the Property and of the condition of the Property; and

2. Buyer obtaining a loan of $339,500.00 at an interest rate not to exceed six percent from an FHA lender to finance the portion of the Purchase Price not being paid in cash. The respective contingency periods are set forth in the Purchase Agreement, with the longest period related to financing requiring satisfaction within twenty-one days after full execution of the Purchase Agreement.

H. Buyer shall purchase the Property with tenants in place.

I. Buyer will assume EBMUD sewer lateral compliance fees.

J. Buyer shall have seventeen days from acceptance of the Purchase Agreement within which to complete all of its investigations and either waive all contingencies or cancel the Purchase Agreement.

K. Buyer will acquire the Property "As Is," "Where Is," and "With All Faults" conditions.

L. Title to the Property shall be subject to all liens or encumbrances for real property taxes and/or assessments which are not delinquent as of the close of escrow.

M. From the sale of the proceeds, Movant intends to pay at Closing to Sacramento Lopez, a secured creditor with a lien on the Property arising from the recordation of an abstract of judgment, the residual Seller funds after payment of all of the foregoing (Seller closing costs, the broker commission, pro rated taxes and assessments, payment or reserve for taxes arising from the sale, etc.) with Mr. Lopez's lien attaching only to such residual sale proceeds until paid.

N. Movant, on behalf of the Estate, will cause this Motion and all papers related thereto to be filed for a hearing on this Motion as soon as possible.

O. The proposed sale to Movant is subject to overbidding at the hearing on this Motion. If there are no overbids for the Property, or if the Buyer is the highest bidder for the Property at the hearing on the Motion, the deposit shall be applied to the Purchase Price or the highest price bid by Movant at the hearing on the Motion, whichever is greater. If a Qualified Overbidder outbids Movant, Movant shall remain obligated to buy the Property at the Purchase Price or its highest bid, if the overbidder fails to close and Movant is the next highest bidder on the Property. If a Qualified Overbidder outbids Movant and closes its purchase of the Property, then the Purchase Agreement shall terminate and the deposit shall be returned to Movant.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of Sacramento Lopez ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that the Purchase Price of $370,000.00 is a fair and reasonable price for the Property. This conclusion is based primarily on property values for similarly situated properties in the area, and the results of marketing the Property. The terms of sale are in the best interests of the estate and its creditors considering the Purchase Price and the Buyer's willingness to accept the Property "as is," without warranties. The overbidding aspect of this Motion is designed to elicit higher offers from interested parties. The sale will result in the further substantial pay-down of Creditor's claim. Payment generated by the sale and partial pay-down on Creditor's lien will move Movant one step closer to concluding her administration in this case.

The basis for requesting the sale free and clear is the anticipated consent of Creditor with the secured claim, Sacramento Lopez, being stated at the September 28, 2017 hearing on this Motion. At the hearing, **XXXXXXXXXXXXXXXXXXXXX**

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will assist Movant in concluding the administrative duties pertaining to this case.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $22,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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 Edmonds "the Chapter 11 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 Irma Edmonds, the Chapter 11 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Thayer Dawson or nominee ("Buyer"), the Property commonly known as 5319 Bancroft Avenue, Oakland, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $370,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 223, and as further provided in this Order.

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

C. ~~The Property is sold free and clear of the lien of Sacramento Lopez, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f), with the lien of such creditor attaching to the proceeds. The Chapter 11 Trustee shall disburse the net sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; to Sacramento Lopez, the consenting creditor holding the secured claim.~~

D. The Chapter 11 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Chapter 11 Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 11 Trustee's agent, Coldwell Banker Residential, which may be divided between the real estate brokers representing the parties to this sale.

2. **16-90002-E-11** **1263 INVESTORS LLC** **MOTION FOR FINAL DECREE AND ORDER CLOSING CASE**
RLC-14 **Stephen Reynolds** **9-8-17 [155]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2017. By the court's calculation, 20 days' notice was provided. The court shortened the notice period and set the matter for hearing at the September 28, 2017 hearing. Dckt. 158.

The Motion for Final Decree and Order Closing Case 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 ----------.

The Motion for Final Decree and Order Closing Case is granted.

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk,* 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

A. the plan confirmation order is final;

B. deposits required by the plan have been distributed;

C. property to be transferred under the plan has been transferred;

D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

E. plan payments have commenced; and

F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc*., 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on February 24, 2017. Dckt. 124. The Plan provides that 1263 Investors, LLC ("Debtor/Plan Administrator") is responsible for operating its business and making distributions in accordance with the terms of the Plan. Debtor/Plan Administrator states that all distributions to be made under the Plan are current and that all the post-confirmation operating reports have been filed.

As indicated by the Advisory Committee Notes accompanying Federal Rule of Bankruptcy Procedure 3022, entry of a final decree closing a Chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtor/Plan Administrator, there are no outstanding deposits that require distribution under the plan, and all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtor, who is currently managing the estate. Debtor/Plan Administrator appears to be current on all distribution under the Plan and filed post-confirmation operating reports.

Thus, the court finds that Debtor/Plan Administrator has satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtor's case.

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 Final Decree and Order Closing Case filed by 1263 Investors, LLC ("Debtor/Plan Administrator") 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 Debtor's Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.

3.	**17-90405-E-7**	**JAMES BEAVER AND JOANNA**	**MOTION TO COMPEL**
	JAD-1	**MURILLO-BEAVER**	**ABANDONMENT**
		Jessica Dorn	**8-29-17 [21]**

Final Ruling: No appearance at the September 28, 2017 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, parties requesting special notice, and Office of the United States Trustee on August 29, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).

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 James Beaver and Joanna Murillo-Beaver ("Debtor") requests the court to order Irma Edwards ("the Chapter 7 Trustee") to abandon property commonly known as 1104 Dixon Way, Modesto, California ("Property"). The Property is encumbered by the lien of Nationstar Mortgage, securing a claim of $231,992.97. The Declaration of James Beaver and Joanna Murillo-Beaver has been filed in support of the Motion and values the Property at $328,000.00. Dckt. 23. Debtor claim an exemption in the Property on Amended Schedule C in the amount of $100,000.00 pursuant to California Code of Civil Procedure 704.730. Dckt. 16.

The court finds that there is no equity in the Property for the Estate and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by James Beaver and Joanna Murillo-Beaver ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 1104 Dixon Way, Modesto, California, and listed on Schedule A/B by Debtor is abandoned by Irma Edwards ("the Chapter 7 Trustee") to James Beaver and Joanna Murillo- Beaver by this order, with no further act of the Chapter 7 Trustee required.

4. **16-90913-E-7** **BEATRICE FLORES** **MOTION FOR COMPENSATION FOR**
SSA-2 **Pro Se** **STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY**
9-1-17 [51]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 1, 2017. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Steven Altman, the Attorney ("Applicant") for Michael 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 November 16, 2016, through August 14, 2017. The order of the court approving employment of Applicant was entered on December 5, 2016. Dckt. 24. Applicant requests fees in the amount of $1,980.00 and costs in the amount of $18.60.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include reviewing case file and securing the initial application for employment, reviewing Debtors' schedules and statement of affairs for conflicts and legal issues, and determination of the principal tasks assigned as counsel for the Chapter 7 Trustee. The Estate has $10,728.54 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. September 19, 2017

General Case Administration: Applicant spent 0.8 hours in this category. Applicant reviewed the case file; coordinated between his office, the Chapter 7 Trustee, and Debtor concerning recoupment of assets owed to the Estate; analyzed tax refunds and payment of $2,500.00 for vehicle purchase.

Fee Applications: Applicant spent 3.1 hours in this category. Applicant checked for conflicts, prepared his employment application, and prepared this application.

Asset Analysis and Recovery: Applicant spent 2.70 hours in this category. Applicant reviewed e-mails with the Chapter 7 Trustee, discussed excess equity in vehicles and collection of tax refunds, and coordinated with Debtor and the Chapter 7 Trustee to inspect Debtor's vehicle.

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
Steven Altman, Attorney	6.6	$300.00	$1,980.00
	0	$0.00	$0.00
Total Fees for Period of Application			$1,980.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $18.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.10	$4.80
Postage	$0.46	$13.80
Total Costs Requested in Application		$18.60

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 $1,980.00 are approved pursuant to 11 U.S.C. § 330, and are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate.

Costs & Expenses

First and Final Costs in the amount of $18.60 pursuant to 11 U.S.C. § 330 are approved 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	$1,980.00
Costs and Expenses	$18.60

pursuant to this Application as final fees 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 Steven Altman ("Applicant"), Attorney for Michael McGranahan ("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 Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,980.00
> Expenses in the amount of $18.60,
>
> 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 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.

5. **11-93024-E-12 TOG-20** **JOSE/MARIA BETTENCOURT** **Thomas Gillis** **MOTION TO SIGN DEED TO REAL PROPERTY OF DEBTORS' DAUGHTER** **9-15-17 [259]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Authorization to Sign Deed to Real Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Authority to Sign Deed to Real Property is denied without prejudice.

Jose Bettencourt and Maria Bettencourt ("Debtor") request authority from the court to sign a transfer of deed of non-estate property that belongs to their daughter. Debtor pleads that in April 2014, the daughter purchased a condominium in Turlock, California, and Debtor Jose Bettencourt co-signed the note and mortgage solely for credit purposes.

Debtor argues that the daughter made all payments for the property that she is the one who has resided there. Debtor claims not to have any financial interest in the property and says that the Estate has no interest in it either.

Debtor states that the five-year plan in this case was completed on May 25, 2017, and all that remains is negotiation for a post-petition debt and payment of a second mortgage, both of which will be paid by the funds held still by Michael Meyer ("the Chapter 12 Trustee").

Debtor has not provided the court with any legal support for its request, and what Debtor appears to be requesting (in part) is a determination that the Estate has no interest in the property. That determination would require an adversary proceeding, pursuant to Federal Rule of Bankruptcy Procedure 7001 and 11 U.S.C. § 541(a)(1). No adversary proceeding has been filed, though.

Federal Rule of Bankruptcy Procedure 7001 states:

> An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: . . . (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property . . . ; (3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property; . . . [or] (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing . . . .

Depending upon how Debtor would frame a complaint, any of the quoted provisions from Federal Rule of Bankruptcy Procedure 7001 could apply.

The Motion states that the Estate has no interest in the property, but Debtor has amended Schedule A to include the property. Dckt. 259 at 3:8.5; Dckt. 264, Amended Schedule A. Despite claiming on Schedule A and in the Motion that Debtor has no interest in the property, Debtor listed the "Nature of Debtor's Interest in Property" on Amended Schedule A as being $193,000.00. Dckt. 264. Additionally, the preliminary title report provided as Exhibit A states that Debtor Jose Bettencourt and Sonia Swanson own the property as joint tenants. Dckt. 263.

The Motion pleads that the property was not acquired until April 2014, but Jose Bettencourt's Declaration states that the property was purchased in April 2004; Sonia Swanson's Declaration does not indicate when the property was purchased. *Compare* Dckt. 259 at 2:19.5, *with* Dckt. 261 at 1:24.5 *and* Dckt. 262. Depending on when the property was acquired, it may be property of the Estate under 11 U.S.C. § 541(a)(1).

The testimony is merely that Debtor signed the note and the mortgage. It is not alleged, nor does Jose Bettencourt appear on title to the Property. While such may be assumed in light of saying that he signed the mortgage, that is not the evidence presented to the court.

Debtor's motion does not state any legal authority that is the basis for the relief requested. Debtor has not provided the court with a points and authorities citing the legal basis for the relief requested.

Debtor has not request relief that the court can grant in a contested matter. Debtor appears to be asking for declaratory relief about the status of potential property of the estate, which should have been presented in an adversary proceeding. The Motion is denied without prejudice.

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

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

The Motion for Authorization to Sign Deed to Real Property filed by Jose Bettencourt and Maria Bettencourt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

6.	**17-90432-E-12 FW-3**	**CARLOS/BERNADETTE ESTACIO Peter Fear**	**MOTION TO APPROVE LEASE AGREEMENT FOR LIVESTOCK FACILITIES 8-30-17 [37]**

Final Ruling: No appearance at the September 28, 2017 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, Chapter 12 Trustee, and Office of the United States Trustee on August 30, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Approve Lease Agreement 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 Approve Lease Agreement is granted.

Carlos Estacio and Bernadette Estacio ("Debtor") move for authority to lease livestock facilities located at 4413 S. Prairie Flower Road, Turlock, California ("Property"). Debtor states that they own the Property, which consists of corrals and free stall barns.

Debtor reports that they have received an offer from Eric Smith and Melanie Smith to rent the Property for $2,000.00 per month for a term of one year, beginning August 1 (or as soon as approved by the court). Debtor moves for authority to rent the Property under 11 U.S.C. § 363(b)(1). That section provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ."

Debtor contends that the funds from leasing the Property are necessary to satisfy the proposed Chapter 12 plan, and Debtor has provided a copy of the lease agreement. Exhibit A, Dckt. 40.

Based upon the evidence before the court, the court determines that the proposed use of property is in the best interest of the Estate because it provides for monthly rental income over the next year.

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 Lease Agreement filed by Carlos Estacio and Bernadette Estacio ("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 Debtor is authorized to lease pursuant to 11 U.S.C. § 363(b) to Eric Smith and Melanie Smith ("Lessee"), the Property commonly known as 4413 S. Prairie Flower Road, Turlock, California ("Property"), for $2,000.00 rent per month for a period of one year on the terms as set forth in the Lease Agreement filed as Exhibit A, Dckt. 40.

7.	**17-90432-E-12 FW-4**	**CARLOS/BERNADETTE ESTACIO Peter Fear**	**MOTION TO APPROVE RESIDENTIAL LEASE AGREEMENT 8-31-17 [45]**

Final Ruling: No appearance at the September 28, 2017 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, Chapter 12 Trustee, and Office of the United States Trustee on August 31, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Approve Lease Agreement 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 Approve Lease Agreement is granted.

Carlos Estacio and Bernadette Estacio ("Debtor") move for authority to lease residential property located at 2260 East Canal Drive, Turlock, California ("Property"). Debtor states that they own the Property.

Debtor reports that they have received an offer from John Segna to rent the Property for $1,300.00 per month on a month-to-month basis. Debtor moves for authority to rent the Property under 11 U.S.C. § 363(b)(1). That section provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ."

Debtor contends that no creditor constituency will be benefitted by rejecting the propose lease, and Debtor has provided a copy of the lease agreement. Exhibit A, Dckt. 48.

Based upon the evidence before the court, the court determines that the proposed use of property is in the best interest of the Estate because it provides for monthly rental income that can be contributed to Debtor's proposed plan.

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 Lease Agreement filed by Carlos Estacio and Bernadette Estacio ("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 Debtor is authorized to lease pursuant to 11 U.S.C. § 363(b) to John Segna ("Lessee"), the Property commonly known as 2260 East Canal Drive, Turlock, California ("Property"), for $1,300.00 rent per month on a month-to-month basis, on the terms and conditions stated in the Lease Agreement filed as Exhibit A, Dckt. 48.

8. 17-90432-E-12 FW-6 | **CARLOS/BERNADETTE ESTACIO** Peter Fear | **MOTION TO APPROVE LEASE AGREEMENT FOR RANCH FACILITIES** 9-7-17 [56]

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 Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Approve Lease Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Approve Lease Agreement is ~~denied without prejudice~~.

Carlos Estacio and Bernadette Estacio ("Debtor") move for authority to lease property commonly known as 6955 Faith Home Road, Ceres, California ("Property"). Debtor states that they own the Property, which consists of twenty acres of orchard trees, a house, and two shops.

Debtor reports that they have received an offer from Arturo Romero and Ramona Romero (Berndadette Estacio's parents) to rent the Property for $9,000.00 per month for a term of five years. Debtor moves for authority to rent the Property under 11 U.S.C. § 363(b)(1). That section provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ."

Debtor contends that the funds from leasing the Property are necessary to satisfy the proposed Chapter 12 plan and that no creditor constituency will be benefitted by rejecting the propose lease. Debtor has provided a copy of the lease agreement. Exhibit A, Dckt. 59.

WELLS FARGO'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION

Wells Fargo Bank, N.A. ("Wells Fargo") filed a Memorandum of Points and Authorities in Opposition on September 11, 2017. Dckt. 64. FN.1. Wells Fargo complains that the proposed lease is an "inside deal" that could not have been negotiated at arm's length because the parties are Bernadette Estacio and her parents.

FN.1. Wells Fargo filed the Opposition, Memorandum of Points and Authorities, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Wells Fargo complains that the proposed lease agreement was not provided to creditors for two weeks after it was signed; that it does not contain an indemnity provision for environmental contamination; that it does not require the lessee to pay real property taxes or utilities; and that if lessee dies, then Debtor inherits the lease and can terminate it early, which would cut off the probate estate's obligation to pay rent.

Wells Fargo argues that this lease is illusory because Debtor's parents have been able to live at the Property for years rent-free. Additionally, Wells Fargo argues that Debtor's income projection will be negative for the first twenty-one months of the propose Chapter 12 plan, even if Debtor's parents are able to pay $9,000.00 per month.

Wells Fargo argues that Debtor's business judgment for the Motion is not reasonable, with a sound business rationale and supporting evidence not being provided.

KHATRI BROTHERS' OPPOSITION

Khatri Brothers, LP, ("Khatri") filed an Opposition on September 13, 2017. Dckt. 67. FN.2. Khatri argues that the lease is unconscionable on its face because it calls for rent payments of $9,000.00 when Debtor listed monthly farm income from the Property of only $7,692.39.

FN.2. Khatri filed the Opposition and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Additionally, Khatri argues that the proposed lease amounts to elder abuse under the California Welfare and Institutions Code. Khatri argues that Debtor's parents have not demonstrated an understanding of the unlikelihood that the Property will generate sufficient net farm income to pay for rent, irrigation, taxes, and crop insurance. Even if the parents have sufficient funds to pay those expenses, Khatri argues that the lease would be voidable as abusive under elder law.

RULING

Wells Fargo and Khatri have raised significant concerns about the amount of rent that Debtor's parents will be paying (or attempting to pay) for a period of five years. Debtor's parents have not provided any testimony that they are willing and able to undertake monthly rent payments of $9,000.00, and the creditors have noted that the lease agreement is not filled out entirely, omitting such details as the month and day that the lease will begin and end and not specifying whether funds from any particular crops will remain with Debtor.

The Oppositions raise several points. **No Reply has been filed by Debtor.**

Only the Declaration of Debtor Bernadette Estacio has been filed in support of the Motion. No testimony is provided by the purposed Lessees, her parents. Generally, a lessee or purchaser of property of the estate does not provide a declaration. In light of the assertion by Khatri Brothers (which is subject to

Federal Rule of Bankruptcy Procedure 9011 certifications), though, a question may exist why the parents would be leasing the property, and if so, whether the $9,000.00 represents fair rental value.

Khatri Brothers complain that it made a two-year interest-only loan, which Debtor now seeks to reamortize over thirty years at five percent interest. The plan is to be funded by these lease payments. However, Debtor states that their total monthly income is $4,632.46, including only "farming income" of $1,307.61 per month. No explanation is provided for why Debtor's parents are paying $9,000.00 per month for a farm that generates only $1,307.61 per month in income.

Khatri Brothers speculate that the parents are unlikely to be able to farm the property, projecting that they are in their mid-to-late seventies (based on Debtor Bernadette Estacio, their daughter, being fifty-five years old) and have not shown how they can farm the property and pay the lease for the term of the loan (or five-year term of the plan). Khatri Brothers is concerned that Debtor's parents may be the subject of elder abuse at the hand of Debtor.

Wells Fargo Bank, N.A. echoes the concerns over the age of the parents and their ability to farm the property. The Bank also addresses the shortcoming in Debtor's budget projections, noting that the livestock lease is for $500.00 per month less than the income amount used in the proposed budget, which causes the budget to be negative.

On Schedule I, Debtor Carlos Estacio, III states that he employed as a fabricator at Santos Fabrication, earning monthly gross income of $3,000.00. Dckt. 12 at 47. On Schedule I he states that he has been so employed for seven months. In addition, he states having net income of $1,307.61 per month from rental property, operation of a business, or farming on Schedule I. There is no statement of gross income and expenses demonstrating how this $1,307.61 net income figure is computed. Schedule I states that Debtor Bernadette Estacio is not employed and generates no income.

While stating this limited farming income, the Statement of Financial Affairs indicates that there was a much greater business operation in the past. For 2015, Debtor states having gross business income of $767,272.00. Statement of Financial Affairs Question 4, Dckt. 12 at 53. This tapered down to $108,089.00 in 2016. *Id.*

~~Based upon the evidence before the court, the court determines that the proposed use of property is not in the best interest of the Estate because it is implausible that Debtor's parents will be able to afford $9,000.00 per month rent when Debtor has informed the court that net monthly income from the farm is less than that amount.~~

~~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 Lease Agreement filed by Carlos Estacio and Bernadette Estacio ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is denied without prejudice.~~

9.	**16-90736-E-11** **TBG-5**	**RONALD/SUSAN SUNDBURG** **Stephan Brown**	**CONTINUED MOTION TO USE CASH COLLATERAL** **2-21-17 [70]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Use Cash Collateral is granted, and the hearing is continued to 10:30 a.m. on November 21, 2017.

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed the instant Motion for Authority to Use Cash Collateral on February 21, 2017. Dckt. 70.

REVIEW OF ORIGINAL MOTION (TBG-5)

Debtor in Possession and Bank of America, N.A. ("BANA") entered into a number of agreements (described in Amended Stipulation at Dckt. 72), including:

A. December 19, 2007: Loan of $324,817.44 to Susan Sundburg evidenced by a Finance Agreement;

B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);

C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);

D. December 31, 2007: Increase of Susan Sundburg's loan to $385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;

E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;

F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;

G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;

H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);

I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to $324,817.44;

J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;

K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;

L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and

M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

BANA asserts that the above properties securing its claims are generating monthly net profit of approximately $500.16 from rents and lease income. BANA asserts that the monthly net profit is its cash collateral pursuant to 11 U.S.C. §§ 552(b) and 363(a). Debtor in Possession seeks to use those funds to maintain the ongoing business of the rental properties at Yosemite Boulevard and South Abbie.

The parties report that the cash collateral will be used as follows:

A. Cash collateral will be used to pay reasonable, ordinary, and necessary expenses of operating and maintaining the Yosemite Boulevard and South Abbie properties;

B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of $200.00, with the first payment due on or before February 28, 2017;

C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;

D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;

E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;

F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;

G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than $50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 10%.

The parties' stipulation grants BANA a replacement lien in all post-petition collateral income securing Debtor's lien to BANA and a replacement lien on the Debtor in Possession's account opened for the use of cash collateral. To the extent that any replacement lien and security interest is insufficient to compensate BANA, BANA shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(2).

The parties submitted an Amended Stipulation on February 21, 2017. Dckt. 72. The Amended Stipulation is the same as what Debtor in Possession has proposed in a new motion, discussed subsequently.

DISCUSSION AT MARCH 23, 2017 HEARING

In the instant case, Debtor in Possession is seeking authorization of the court to use cash collateral to pay reasonable, ordinary, and necessary expenses to operate and maintain the Yosemite Boulevard and South Abbie properties.

While the Motion seeks authorization for the use of cash collateral, the Debtor in Possession does not provide specific expenses that are necessary to avoid immediate and irreparable harm to the estate.

The budget provides a list of income and expenses, but it does not specify which of these expenses are necessary to be paid using cash collateral. Additionally, the attached budget differs from

Debtor in Possession's claim regarding how much money is available in total monthly net income. Debtor in Possession states that $500.16 is available, but the budget shows that $300.16 is actually available.

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Debtor in Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Previously, Debtor in Possession and Creditor filed a stipulation in which the Creditor consented to Debtor in Possession's use of cash collateral. The adequate protection payment proposed was $200.00, beginning February 28, 2017, and continuing thereafter on the tenth day of each month through July 11, 2017. Here, Debtor in Possession asserts that it will continue making adequate protection payments of $200.00 to Creditor. The court found that the adequate protection payment was sufficient given the facts of the instant case.

Review of Schedules

Debtor in Possession lists personal property assets having a value of $66,086.60 on Schedule B (of which $571.10 are stated to be accounts receivable). Dckt. 1. Stanislaus County Tax Collector is listed on Schedule D as a creditor having a secured claim. Dckt. 24.

The unsecured claims listed on Schedule F total $8,361.11. Dckt. 24. The Yosemite Boulevard, South Abbie, and Adams Road real properties are listed on Schedule A, and two leases are listed on Schedule G. Dckts. 1 & 24.

RULING AT MARCH 23, 2017 HEARING

The Motion was granted, and Debtor in Possession was authorized to use the cash collateral for the period April 1, 2017, through July 31, 2017, including the required adequate protection payments. The court did not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus Cash Collateral from the Property was to be held in a cash collateral account and separately accounted for by Debtor in Possession.

The court continued the hearing to 10:30 a.m. on July 13, 2017, for Debtor in Possession to file a Supplement to the Motion to extend authorization. Dckt. 79. That Supplement was due by June 29, 2017.

RULING AT JULY 13, 2017 HEARING

At the July 13, 2017 hearing, Debtor in Possession's counsel admitted that he missed the deadline but that he and counsel for BANA were close to finalizing a stipulation. Dckt. 96. Counsel for BANA appeared telephonically and confirmed that the parties were at "the two-yard line" and should have a final stipulation ready for the court's review soon.

Debtor in Possession requested that cash collateral be authorized for an additional two months—through September 2017. Debtor in Possession proposed using the same budget that the court has approved previously. Counsel for BANA agreed that such authorization was acceptable to BANA.

The court granted the Motion for the period August 1, 2017, through September 30, 2017, and ordered Debtor in Possession to file any Supplement to the Motion to extend authorization by September 21, 2017, with any opposition to be presented at the continued hearing at 10:30 a.m. on September 28, 2017. Dckt. 98.

SUBSEQUENT MOTION TO EXTEND AUTHORITY TO USE CASH COLLATERAL (TBG-7)

Instead of filing a Supplement to the Motion, Debtor in Possession filed a new motion, with a new Docket Control Number, on September 19, 2017. Dckt. 117. In the new pleading, Debtor in Possession requests approval of the same budget that the court approved previously, presented here as:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	$2,750.00	
	First Mortgage (Jenison)		($1,188.67)
	Bank of America AP Payment		($200.00)
	Property Taxes		($623.88)
	Utilities (Water, Sewer, Garbage)		($113.14)
	Repair/Maintenance		($500.00)
	NET INCOME	$124.31	
Personal Property Collateral			
	Lease Income	$450.00	
	Stearns Leasing (Laser Lease)		($244.15)
	Repairs/Maintenance		($30.00)

	NET INCOME	$175.85	
	TOTAL NET INCOME	$300.16	

Debtor in Possession also requests that approval of the use of cash collateral include a 10% variance for each category of expense, with the exception of property taxes, to be paid biannually when due, with any cash remaining after tax payments to be retained in Debtor in Possession's cash collateral account. Debtor in Possession also requests that net rent amounts remain in the cash collateral account.

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 sell 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 Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing

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

RULING

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period October 1, 2017, through November 30, 2017, including the required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus Cash Collateral from the Property is to be held in a cash collateral account and separately accounted for by Debtor in Possession.

The court continues the hearing to 10:30 a.m. on November 21, 2017, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by November 14, 2017, with any opposition to be presented orally at the continued hearing.

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 Ronald Sundburg and Susan Sundburg ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, pursuant to this order, for the period October 1, 2017, through November 30, 2017, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	$2,750.00	
	First Mortgage (Jenison)		($1,188.67)

	Bank of America AP Payment		($200.00)
	Property Taxes		($623.88)
	Utilities (Water, Sewer, Garbage)		($113.14)
	Repair/Maintenance		($500.00)
	NET INCOME	$124.31	
Personal Property Collateral			
	Lease Income	$450.00	
	Stearns Leasing (Laser Lease)		($244.15)
	Repairs/Maintenance		($30.00)
	NET INCOME	$175.85	
	TOTAL NET INCOME	$300.16	

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that Debtor in Possession shall continue to make the monthly adequate protection payment of $200.00 to Bank of American, N.A.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **10:30 a.m. on November 21, 2017**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before, November 14, 2017, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the November 21, 2017 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

10. **09-94048-E-7** **JIMMY/ERMELINDA ROBLES** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Jeffrey Prather **9-8-17 [37]**

Final Ruling: No appearance at the September 28, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, creditors, parties requesting special notice, and Chapter 7 Trustee as stated on the Certificate of Service on September 10, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on August 25, 2017.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

11. **11-94258-E-7** **DONNA/ERIC MEGEE** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DONNA CAROL MEGEE AND ERIC THANE MEGEE**
SCB-3 **Richard Schneider** **8-19-17 [160]**

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 August 19, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Gary Farrar, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle the Estate's interest in *In re Boston Scientific, Corp. Pelvic Repair Systems Products Liability Litigation*, MDL No. 2326, United States District Court for the Southern District of West Virginia. Through the settlement, the parties propose to resolve the Estate's interest in the product liability lawsuit. The defendants of the lawsuit have agreed to pay the net award settlement amount of $110,117.24 to the bankruptcy estate.

The parties have resolved the lawsuit, 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. 166):

A. The defendants of the lawsuit agreed to pay the gross settlement amount of $115,827.67 to the bankruptcy estate. After payment of a five percent MDL Fee

Assessment of $5,791.38 and interest of $80.98, the net award is $110,117.24. Disbursements and out of pocket expenses total $52,758.20.

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).

Probability of Success

Movant argues that the probability of success on the lawsuit is uncertain. Difficult factual and legal issues would have to be litigated. Defendant in the lawsuit denies all allegations and raises numerous defenses. Furthermore, very few similar cases have been tried, while thousands have been pending for several years.

Difficulties in Collection

Movant argues that the lawsuit would be extremely costly to prosecute because of numerous medical expert witness reviews. Additionally, even if there were recovery at trial, the defense would likely appeal, and any recovery would be further reduced in litigation of the appeal. On the other hand, the Compromise is a reasonable settlement that allows for certainty of recovery and payment of $110,117.24 to the Estate.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the success of the lawsuit is uncertain, and continuing to prosecute the lawsuit could lead to further delay. After that, there could be post-trial motions and appeals, so the Compromise avoids expense, inconvenience, and delay.

Paramount Interest of Creditors

Movant argues that the Compromise allows collection of $110,117.24 for the bankruptcy estate without the expense, uncertainty, or delay of costly litigation. Thus, there is a significant saving of time and administrative expense by avoiding further litigation. The settlement approaches a fair solution of a case without any certainty.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because fairness and reasonableness would be achieved while avoiding costly expenses and delays that would result if the parties continued litigating. 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 filed by Gary Farrar, the Chapter 7 Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Disbursement Statement filed as Exhibit A in support of the Motion (Dckt. 166).

12. **11-94258-E-7** **DONNA/ERIC MEGEE** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DONNA CAROL MEGEE AND ERIC THANE MEGEE**
SCB-4 **Richard Schneider** **8-19-17 [168]**

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 August 19, 2017. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Gary Farrar, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Donna Megee and Eric Megee ("Settlor"), the Debtors. Through the settlement, the parties proposed to resolve the distribution of the settlement proceeds from the product liability lawsuit in the United States District Court For The Southern District of West Virginia, Charleston Division, entitled *In re Boston Scientific, Corp. Pelvic Repair Systems Products Liability Litigation,* MDL No. 2326 ("Lawsuit") that is property of the bankruptcy estate.

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 B in support of the Motion, Dckt. 174):

A. Movant shall pay Settlor $43,341.55 from the Net Settlement Amount. Settlor has already received $2,517.49 and shall not claim any additional interest in the Lawsuit

Settlement. Settlor shall waive all claims for exemption or otherwise in relation to the Lawsuit and Lawsuit Settlement.

B. Movant shall send a check to Settlor after all of the following has occurred: 1) The Bankruptcy Court has entered an order approving the compromise of the Lawsuit and an order approving the compromise of the dispute, the application for which Movant shall file; 2) the time to appeal both orders has expired and no party has filed an appeal; and 3) Movant has received payment of the Net Settlement Amount.

C. The bankruptcy estate shall retain the remaining balance of the Net Settlement Amount, $64,258.20, for payment of Special Counsel's attorneys' fees and costs of $51,208.82, medical liens of $1,549.38, and the remaining $11,500.00 for the Estate's professional fees and distribution to the creditors of the bankruptcy estate.

D. The settlement documented by this Agreement is conditional on the Bankruptcy Court's granting of the Compromise Motion. The Settlor shall reasonably support the Compromise Motion. If the Court does not grant the Compromise Motion, then the Releases contained in this Settlement Agreement shall be of no effect.

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).

Probability of Success

Movant argues that success is uncertain. Settlor contends that their interest in the Lawsuit is not property of the bankruptcy estate because Settlor's medical complications began prepetition, and because the Lawsuit was disclosed in their Amended Schedules and then abandoned to them when the case was

closed. Settlor argues they can further amend their schedule to exempt $29,679.02 and that the settlement funds are necessary for their support. There are disputed factual issues that will be difficult to resolve.

Difficulties in Collection

Movant is not aware of any difficulties in collection because defendants in the lawsuit would turn over the lawsuit settlement amount, less the MDL fees and lien holdbacks.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues the administrative expenses of litigation could be large and consume a significant portion of any potential benefit to the Estate, even if Movant were to prevail. On the other hand, the Compromise allows Movant to recover $11,500.00 for the Estate's professional fees and distribution to the unsecured claims of the bankruptcy estate.

Paramount Interest of Creditors

The Compromise allows Movant to recover $11,500.00 for the Estate's professional fees and distribution to the unsecured claims of the bankruptcy estate without the expense, uncertainty, or delay of costly litigation. Thus, the Compromise is a fair resolution that results in significant savings in time and administrative expense by avoiding further litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it is a fair resolution of the case that allows Movant to collect $11,500.00 without the expense, uncertainty, or delays of costly litigation. 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 filed by Gary Farrar, the Chapter 7 Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Donna Megee and Eric Megee ("Settlor") is granted, and the respective

rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 174).

13.	**11-94258-E-7** **SCB-5**	**DONNA/ERIC MEGEE** **Richard Schneider**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF HENINGER GARRISON DAVIS, LLC FOR WILLIAM L. BROSS, SPECIAL COUNSEL(S)** **8-19-17 [176]**

Final Ruling: No appearance at the September 28, 2017 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, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2017. By the court's calculation, 40 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.

Heninger Garrison Davis, LLC; Sokolove Law; Freese & Goss, PLLC; and Mathews & Associates, the Special Counsel ("Applicant") for Gary Farrar, 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 March 10, 2012, through August 19, 2017. The order of the court approving continued employment of Applicant was entered on July 6, 2017. Dckt. 159. Applicant requests fees in the amount of $49,552.76.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include prosecuting a product liability lawsuit in the United States Court for the Southern District of West Virginia, entitled *In re Boston Scientific, Corp. Pelvic Repair Systems Products Liability Litigation*, MDL No. 2326. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in product liability litigation, for which a settlement agreement includes attorney's fees of 45% of the settlement amount. In approving the employment of applicant, the court did not approve a contingent fee. $54,841.55 of net monies (exclusive of these requested fees) was recovered for the Estate.

The persons providing the services are:

Names of Professionals and Experience	**Total Fees**
Freese & Goss, PLLC	$3,094.45
Mathews & Associates	$3,094.45
Sokolove Law	$9,902.25
Heninger Garrison Davis, LLC	$33,420.08
Total Fees for Period of Application	$49,511.23

The total fees have been reduced by $41.53.

FEES ALLOWED

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $49,552.76 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay 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 $49,552.76

pursuant to this Application as final fees 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 Heninger Garrison Davis, LLC; Sokolove Law; Freese & Goss, PLLC; and Mathews & Associates ("Applicant"), Special Counsel for Gary Farrar ("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 Heninger Garrison Davis, LLC; Sokolove Law; Freese & Goss, PLLC; and Mathews & Associates is allowed the following fees and expenses as a professional of the Estate:
>
> Heninger Garrison Davis, LLC; Sokolove Law; Freese & Goss, PLLC; and Mathews & Associates, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $49,552.76,
>
> 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 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.

14. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **CONTINUED MOTION TO USE CASH COLLATERAL**
MHK-1 **David Johnston** **4-30-15 [32]**

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Defaults of the non-responding parties are entered by the court.

The Motion to Use Cash Collateral is denied without prejudice.

Lawrence Souza and Judith Souza ("Former Debtor in Possession") filed the instant Motion to Use Cash Collateral on April 30, 2015. Dckt. 32.

The court has previously authorized the use of cash collateral, and Former Debtor in Possession has not filed a further supplemental request. This case has been converted to one under Chapter 7.

MAY 18, 2017 HEARING

At the hearing, the court authorized the use of cash collateral for the period of June 1, 2017, through September 30, 2017. Dckt. 594. Additionally, the court continued the hearing to 10:30 a.m. on September 28, 2017, for the court to continue authorizing the further use of cash collateral. On or before August 28, 2017, Former Debtor in Possession was ordered to file a Supplement to the Motion, if any, in support of authorization for the further use of cash collateral, along with a Notice of Continued Hearing. Opposition to such further use, if any, was ordered to be filed and served on or before September 11, 2017. Dckt. 638.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor in Possession serves in the place of a Chapter 11 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 sell 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 Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

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

DISCUSSION

The Trustee, successor to the Former Debtor in Possession, has not requested further authorization to use cash collateral, and there is no pending request for the court to consider. Therefore, the Motion is denied without prejudice.

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

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

15.	**15-90358-E-7** **SCF-1**	**LAWRENCE/JUDITH SOUZA** **David Johnston**	**MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S)** **8-30-17 [649]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2017. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is denied without prejudice.

Ryan, Christie, Quinn & Horn, Certified Public Accountants, the Accountant ("Applicant") for Lawrence Souza and Judith Souza, former Debtor in Possession ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 21, 2017, through June 20, 2017. The order of the court approving employment of Applicant for the requested fee period was entered on September 7, 2016. Dckt. 403. Applicant requests fees in the amount of $5,580.00.

SUFFICIENT NOTICE NOT PROVIDED

Applicant provided 29 days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing when requested fees exceed $1,000.00, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. Those two minimums total thirty-five days. Applicant has provided six fewer days than the minimum. Therefore, the Motion is denied without prejudice.

At the hearing, Applicant made an oral motion to **xxxxxxxxxxxxxx**.

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 Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"), Accountant for Lawrence Souza and Judith Souza, former Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

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

UNITED STATES TRUSTEE'S LIMITED OBJECTION

The United States Trustee opposed the motion on September 14, 2017. Dckt. 657. The United States Trustee expresses concern that many of Applicant's time entries reflect lumping or block-billing. Additionally, the United States Trustee believes that some of the billing entries are vague. The United States Trustee opposes 107.80 billed hours, totaling $25,290.00 in fees.

STIPULATION

Applicant and Tracy Hope Davis, the United States Trustee, filed a Stipulation that resolves the United State's Trustee's opposition on September 21, 2017. Dckt. 666. Applicant agrees to reduce its fee request by $4,399.50 to $39,595.50 total, and the United States Trustee does not oppose the remaining amount requested by Applicant.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re*

Garcia), 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must

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

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

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

A review of the application shows that Applicant's services for the Estate include tax-related matters and monthly operating reports. 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.

Tax-Related Matters: Applicant spent 13.5 hours in this category. Applicant conducted telephone conferences regarding pre-petition foreclosures and likely post-petition abandonments, discussed the need for Client to have another accountant, analyzed tax consequences of abandoning property or failure to abandon, conducted telephone conferences regarding Client's hesitance to abandon property, discussed tax consequences of a short sale, discussed whether Client was insolvent under the Internal Revenue Code, discussed a short sale with Client and realtor, discussed tax consequences of foreclosures, discussed tax consequences of a Chapter 11 plan, discussed conversion to Chapter 7, and discussed amending personal tax returns and S-Corporation returns.

Monthly Operating Reports: Applicant spent 9.6 hours in this category. Applicant discussed problems with prior monthly operating reports, requested additional information from

Client's prior accountant, analyzed reports for rental income discrepancies, drafted a memo regarding inadequacies in the reports, and discussed the problems with Client.

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**
Paul Quinn, CPA	20.5	$250.00	$5,125.00
Deborah Monis, CPA	2.6	$175.00	$455.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$5,580.00

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

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$38,415.00	$0.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$38,415.00	

FEES ALLOWED

Pursuant to the Stipulation, Applicant seeks to be paid a single total sum of $39,595.50 for its fees incurred for Client, which reflects a reduction of $4,399.50. Because the court has already approved interim compensation of $38,415.00, the court treats Applicant's reduction as being taken from the current Second and Final request. Second and Final Fees in the amount of $1,180.50 and prior Interim Fees in the amount of $38,415.00 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.

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

Fees $1,180.50

pursuant to this Application and prior interim fees of $38,415.00 as final fees 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 Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"), Accountant for Lawrence Souza and Judith Souza, former Debtor in Possession, ("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 Ryan, Christie, Quinn & Horn, Certified Public Accountants is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, Certified Public Accountants, Professional employed by former Debtor in Possession
>
> Fees in the amount of $1,180.50,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant for former Debtor in Possession.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $38,415.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

16. 17-90668-E-7 **JOSE SALCEDO** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Wilber Manuel Salgado **9-1-17 [11]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 3, 2017. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on August 18, 2017.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

17. 17-90673-E-7 **ELIZABETH SCHWARZ**
Pro Se

MOTION FOR TEMPORARY WAIVER OF THE CREDIT COUNSELING REQUIREMENT
8-21-17 [5]

The Motion for Temporary Waiver of the Credit Counseling Requirement is xxxxx.

On August 21, 2017, Elizabeth Schwarz ("Debtor") filed a request for the court to temporarily waive the credit counseling requirement for her because she has been taking several strong pain medications. Dckt. 5.

On August 28, 2017, the court issued an order setting this matter for hearing at 10:30 a.m. on September 28, 2017. Dckt. 16. The court noted that Debtor's medical concerns raise an issue of whether Debtor can prosecute this case and complete the documents necessary for the case to proceed. The court ordered that Debtor would address at the hearing her ability to prosecute this case.

At the hearing, xxxxxxxxxxxx.

18. 17-90673-E-7 **ELIZABETH SCHWARZ**
Pro Se

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
8-21-17 [6]

The Motion for Waiver of the Chapter 7 Filing Fee is xxxxx.

On August 21, 2017, Elizabeth Schwarz ("Debtor") filed a request for the court to waive payment of the Chapter 7 filing fee for her because she has been taking several strong pain medications. Dckt. 5.

On August 28, 2017, the court issued an order setting this matter for hearing at 10:30 a.m. on September 28, 2017. Dckt. 16. The court noted that Debtor's medical concerns raise an issue of whether Debtor can prosecute this case and complete the documents necessary for the case to proceed. The court ordered that Debtor would address at the hearing her ability to prosecute this case.

At the hearing, xxxxxxxxxxxx.

19. **08-92594-E-7** **ROBERT/STEPHANIE ACHTERBERG**
15-9054

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
8-22-17 [65]

ACHTERBERG, JR. ET AL V. CREDITORS TRADE ASSOCIATION, INC.

ADVERSARY PROCEEDING CLOSED: 02/21/2017

The Debtor Examination is xxxxxxxxxxxxxxxxxxx.

On August 22, 2017, Robert Achterberg, Jr., and Stephanie Achterberg ("Plaintiffs") filed an Application for Order of Exam of Creditor–Creditors Trade Association, Inc. ("Defendant"). Dckt. 65. Platintiffs sought for Gary Looney, Defendant's President, to appear and bring the following documents:

A. Financial Profit and Loss Report for business 2015, 2016, and 2017 (to date);

B. Financial Balance Sheet for Business 2015, 2016, and 2017 (to date);

C. Documents related to the lease, rental, or ownership of business lease at Office at 3785 Brickway Blvd., Santa Rosa, California;

D. Any and all agreements for use of office space with any entities who act on Gary Looney's behalf in the collection of debts;

E. Documents showing any ownership or business relationship with any entities other than Defendant;

F. Documents showing the transfer of any assets of Defendant since September 25, 2016;

G. Documents showing the transfer of any personal assets since September 25, 2016;

H. List of all accounts receivable of Defendant or any other entity in which Gary Looney has a beneficial interest;

I. List of any and all bank checking, saving, or financial accounts in existence, designated by account name, number, and location at time of entry of judgment in this case (February 3, 2017) to present; and

J. List of any and all bank checking, saving, or financial accounts in existence, designated by account name, number, and location, at time of judgment in this case (February 3, 2017) to present that have been closed on account and ending balance.

On August 23, 2017, the court entered an order for Gary Looney to appear before the court at 10:30 a.m. on September 21, 2017, and furnish information to aid in enforcement of a money judgment against him and to answer concerning the debt Defendant owes to Plaintiffs. Dckt. 66.

SEPTEMBER 21, 2017 HEARING

At the September 21, 2017 hearing, the court noted that a calendaring error resulted in this matter being set for hearing at 10:30 a.m. in Sacramento, instead of in Modesto. Therefore, the court continued the matter to the next Modesto Division date—10:30 a.m. on September 28, 2017. Dckt. 67.

SEPTEMBER 28, 2017 HEARING

At the hearing, **xxxxxxxxxxxxx**.