

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**October 17, 2019 at 10:30 a.m.**

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| 1. | <a href="#"><u>19-90487</u></a> -E-7 | <b>JESUS MADRIGAL</b><br><b>Marc Voisenat</b> | <b>ORDER TO SHOW CAUSE - FAILURE<br/>TO PAY FEES</b><br><b>9-19-19 <a href="#"><u>45</u></a></b> |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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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 21, 2019. The court computes that 26 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 May 28, 2019.

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| <b>The Order to Show Cause is sustained, and the case is dismissed.</b> |
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The court's docket reflects that the default in payment that is the subsection 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.

2. [19-90400-E-7](#)  
[SSA-1](#)

**JUSTAN JOHNSON**  
Steven S. Altman

**CONTINUED MOTION TO DISMISS**  
**CASE**  
8-9-19 [24]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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| <b>The Motion to Dismiss is <span style="color: red;">XXXXXX</span></b> |
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The debtor, Justan A. Johnson ("Debtor"), filed this Motion seeking to dismiss the Chapter 7 case pursuant to 11 U.S.C. § 707. Debtor's reason for wanting dismissal is straightforward: in less than a month after filing this case, Debtor's grandmother passed away, and Debtor learned he will inherit real property valued at approximately \$300,000.00. Declaration, Dckt. 28.

The Debtor argues that with this significant change in financial circumstances, Debtor can procure a secured loan for roughly \$50,000.00 to pay all claims in this case, as well as any administrative expenses the Chapter 7 trustee has incurred thus far.

In support of the Motion, Debtor filed the Declaration of Chris Harringfeld, the president and owner of California Mortgage Associates. Declaration, Dckt. 27. Harringfeld testifies that it will be difficult to obtain a loan on the Debtor's new property while in a Chapter 7, and that even in a chapter 13 it would take approximately one year before Debtor is eligible for a loan. *Id.*

## **CHAPTER 7 TRUSTEE'S OPPOSITION**

Garry Farrar, the Chapter 7 Trustee ("Trustee") filed an Opposition on September 5, 2019. Dckt. 30. Trustee argues that despite the Debtor's representations, there is nothing requiring Debtor to pay creditors in the event the case is dismissed.

Trustee argues further that despite Debtor's arguments, Debtor could receive a loan despite being in bankruptcy. The Declaration of Trustee provides testimony that he would be able to get a loan secured by the property for \$50,000.00 at 9.75% APR and 3 points over a 10 year term. Declaration, Dckt. 31.

Trustee concludes that allowing him to administer the property would pay all claims in this case and avoid "plain legal prejudice" to creditors.

## **DEBTOR'S REPLY**

Debtor filed a Reply on September 11, 2019. Dckt. 34. Debtor argues the following:

1. Information about a potential loan brought in through Trustee's Exhibit B is inadmissible hearsay.
2. The loan proposed by Trustee is more akin to a "hard money loan."
3. There is no prejudice to any creditor through dismissal of the case because creditors are free to assert their rights outside of bankruptcy. No creditor has filed an opposition to the Motion.
4. Debtor wishes to proceed outside of bankruptcy to preserve his credit and to avoid further administrative costs.

## **SEPTEMBER 19, 2019 HEARING**

At the September 19, 2019 hearing, the parties requested the hearing be continued so they can work out a stipulated order to address the Trustee's concerns. Civil Minutes, Dckt. 38.

## **DISCUSSION**

The court may dismiss a case under Chapter 7 only after notice and a hearing and only for cause. 11 U.S.C. § 707. Colliers provides the following discussion regarding voluntary dismissal:

When the debtor seeks dismissal of a voluntary case, the relevance of the "cause" requirement has been questioned. Most cases, however, seem to require some cause for dismissal even in this situation, although the cause may simply be that dismissal is in the best interest of the debtor and not prejudicial to creditors. The debtor's best interest lies generally in securing an effective fresh start upon discharge and in the reduction of administrative expenses, leaving resources to work out debts; for creditors, if delay is said to have prejudiced them, the court must determine whether, as section 707(a) provides, the delay has been unreasonable. Thus, for example, the

Court of Appeals for the Second Circuit, in *Smith v. Geltzer*, held that the bankruptcy court must consider whether dismissal would benefit creditors and whether it would enable the debtor to secure an effective fresh start, as well as the costs to the debtor, both in administrative expenses and the possible harm to a debtor's ability to obtain credit or seek bankruptcy relief in the future.

When the debtor seeks dismissal, courts must take care to assure that creditors will not be prejudiced by a dismissal. Debtors are not generally permitted to dismiss cases over the objections of creditors or the trustee in order to refile to gain the benefit of exemptions that had been improperly claimed in the first case. Some courts have refused dismissal of a voluntary petition when the primary purpose was to file a fresh petition that would include debts incurred since the petition sought to be dismissed was filed. Similarly, dismissal may be denied when it is sought because property has been obtained or is expected that could satisfy the debtor's debts, to transfer the case to a different district, to render dischargeable a previously nondischargeable debt, or because fraud on the part of the debtor is discovered. The fact that the debtor has changed his or her mind about invoking bankruptcy jurisdiction to seek relief from debts and giving up the Seventh Amendment right to a jury trial on a claim that has passed to the bankruptcy estate is not, by itself, cause for dismissal.

Generally, it has been held that the trustee has standing to object on behalf of the unsecured prepetition creditors of the debtor, even if no creditor objects. However, some courts have held that the trustee may object only for the purpose of securing the trustee's own costs and expenses.

6 Collier on Bankruptcy P 707.03 (16th 2019).

Here, the cause for dismissal is arguably that payment of claims would be easier and cheaper outside of bankruptcy given Debtor's post-petition change in circumstances. This argument is well-taken. Dismissing the bankruptcy would reduce administrative expense, avoid more significant detriment to Debtor's credit, and possibly allow for more favorable loan terms.

At the same time, allowing Debtor to dismiss the case would permit Debtor to increase the delay and expense to creditors before recovering on their claims (in the event creditors are forced to seek enforcement themselves, Debtor deciding not to voluntarily pay claims as represented).

Debtor commenced this case with the May 1, 2019 *pro se* filing of his Voluntary Petition. On Schedule D Debtor lists one creditor with a claim of (\$13,384.00) secured by Debtor's vehicle stated to have a value of \$14,000.00. Dckt. 1 at 19.

Debtor lists having general unsecured claims of (\$30,447.00), of which (\$17,433) is Capital Bank for credit card debt, (\$5,751.00) to Chase Bank for credit card debt, and (\$2,485.00) to Chase Card for credit card debt. Schedule D/E, *Id.* at 20-21. Thus, at least 84% of Debtor's unsecured obligations are for credit card debt.

Going to Schedule I Debtor listing having monthly take home income of \$2,735. *Id.* at 26-27. On Schedule J Debtor lists having (\$2,842.00) in month obligations, leaving him a negative (\$106.21) a month after his reasonable and necessary expenses. This includes (\$700) a month for rent.

In his Reply Debtor bemoans that the loan the trustee suggests is a “hard money loan” and not reasonable. Given Debtor’s income, one questions what other loan he could obtain. This “get a loan and pay creditors” solution is the one given to the Debtor why the case should be dismissed and creditors be left to Debtor voluntarily paying everyone.

The Trustee filed a Reply Declaration to the Reply filed by the Debtor to the opposition addressing the lack of a declaration by a representative of the hard money lender. Dckt. 36. This provides confirmation of a loan to Debtor.

It appears that given Debtor having engaged experienced counsel and there being an experienced, reasonable Chapter 7 Trustee, a possible resolution based on a realistic repayment method could be established. It may be, if the Debtor investigates other lenders that his post-bankruptcy dismissal rate may be better, but only slightly better, given his income and expenses. It may be a year or two after dismissal he could refinance.

Or it may be that a lien or other encumbrance can be placed on the property to insure that the monies from the property, loan or sale, will be used to pay the claims that would be paid through this bankruptcy case filed by Debtor.

At the hearing, **XXXXXXXXXXXXXX**.

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

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

The Motion to Dismiss the Chapter 7 case filed by the debtor, Justan A. Johnson (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is **XXXXXXXXXX**.

3. [19-90122-E-11](#)  
[MF-4](#)

MIKE TAMANA FREIGHT  
LINES, LLC  
Reno F.R. Fernandez

CONTINUED MOTION TO USE CASH  
COLLATERAL  
2-12-19 [\[21\]](#)

**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).**  
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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 creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

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

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| <p><b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">XXXXXXX</span>.</b></p> |
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**REVIEW OF INITIAL MOTION TO USE CASE COLLATERAL  
AND  
HISTORY OF PRIOR PROCEEDINGS AND AUTHORIZATIONS**

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to use cash collateral to pay necessary expenses for the estate to continue to operate the transportation business that is included in the estate. The Debtor in Possession is continuing to operate on interim post-petition financing terms.

The Expenses to be paid with cash collateral are set forth in Exhibit C (Dckt. 23) filed in support of this Motion.

The court has conducted a series of prior hearing, issuing prior orders and making findings thereon. A review of the prior hearings is set forth in the Civil Minutes from the August 29, 2019 prior hearing. Dckt. 349.

## **CURRENT REQUEST FOR USE OF CASH COLLATERAL**

### **FIFTH SET OF SUPPLEMENTAL PLEADINGS FOR OCTOBER 17, 2019 HEARING**

On October 3, 2019 Debtor in Possession filed its Fifth Set of Supplemental Exhibits and Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckts. 365, 366.

The Debtor in Possession projected the following financial consequences of operating under the cash collateral budget for the 13 week period starting August 11, 2019:

|                     |                      |
|---------------------|----------------------|
| Total Revenue.....  | \$5,590,000          |
| Total Expenses..... | <u>(\$5,469,679)</u> |

Net Operating Income For the 13 Week Period.....\$120,321

Exhibit G, Dckt. 366.

### **DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for expenses necessary for the estate to continue to operate the transportation business that is included in the estate. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period November 10, 2019 through February 2, 2020. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to **xx:xx x.m. on xxxx, 201x**, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by **xxxx, 201x**, 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 Mike Tamana Freight Lines, LLC (“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 hearing on the Motion to Use Cash Collateral is continued to **XXXXXXXXXX**, at 10:30 a.m.

**IT IS FURTHER ORDERED** that the use cash collateral as set forth in the budget filed as Exhibit G (Dckt. 366) is authorized on an interim basis for the period November 10, 2019 through February 2, 2020, pending further order of this court.

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| 4. <a href="#"><u>18-90029</u></a> -E-11<br><a href="#"><u>AB-3</u></a> | <b>JEFFERY ARAMBEL</b><br>Matt Olson | <b>MOTION FOR COMPENSATION FOR<br/>ARCH &amp; BEAM GLOBAL, LLC,<br/>FINANCIAL ADVISOR(S)<br/>9-26-19 [978]</b> |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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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, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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| <b>The Motion for Allowance of Professional Fees is granted.</b> |
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Howard Bailey of Arch & Beam Global, LLC, the Financial Advisor (“Applicant”) for Jeffrey Edward Arambel, 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 June 1, 2018, through September 10, 2019. The order of the court approving employment of Applicant was entered on March 29, 2018. Dckt. 164. Applicant requests fees in the amount of \$321,292.50 and costs in the amount of \$1,681.54.

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FN.1. The Fee Application requests \$1,717.75 in costs. However, the breakdown of expenses totals to \$1,681.54. The court allows only the expenses stated in the Motion.

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## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

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

*Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

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

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

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

© 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 Summary of Services. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

#### **Fees**

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

General Case Administration: Applicant spent 14.0 hours in this category. Applicant assisted Debtor in Possession by analyzing background information and documents, and through discussion helped Debtor to develop general strategy.

Asset Analysis and Recovery: Applicant spent 7.4 hours in this category. Applicant analyzed and assessed the value of non-real estate assets, estate assets available for sale, and the likely return to creditors.

Meetings of and Communications with Creditors: Applicant spent 57.7 hours in this category. Applicant assisted Debtor in Possession with frequent communications, including phone calls and meetings,

with various secured and unsecured creditors; and spent significant time analyzing and reconciling loan statement from creditors.

Fee/Employment Applications: Applicant spent 9.9 hours in this category. Applicant assembled time records and prepared Fee Application; and included work on First and Second Fee Application. Times records do not include certain administrative preparation time.

Non-working Travel: Applicant spent 8.6 hours in this category. Applicant assisted Debtor in Possession with traveling to properties and court hearings; and Applicant cut normal time charges in half.

Preparation for and Attendance at Court Hearings: Applicant spent 50.3 hours in this category. Applicant assisted Debtor in Possession with preparing for and attending court hearings, including analyzing court filings by other parties and pre-trial rulings.

Financing/Cash Collections: Applicant spent 68.1 hours in this category. Applicant assisted Debtor in Possession by analyzing the budget, cash management, and financing and cash needs. Applicant prepared multiple budgets and cash to budget reports related to the use of cash collateral. Budgets were created for bankruptcy compliance and also for preparation for Plan Confirmation; and included calls and meetings with the financing broker BizCap to determine potential structures.

Tax Issues: Applicant spent 32 hours in this category. Applicant assisted Debtor in Possession to reconcile its tax situation, particularly with property taxes, which required multiple communications with Stanislaus County. Although, there was a professional tax accountant in this case, Applicant was required to perform research and gather data for property tax purposes and compile the financial data to file tax returns.

Real Estate: Applicant spent 186.8 hours in this category. Applicant assisted Debtor in Possession with the analysis of as well as deploying a strategy for its real estate. Applicant spent time in meetings and making telephone calls with both Debtor in Possession and retrained professionals. Additionally, Applicant performed a detailed reconciliation of parcels to APNs with Google Earth and Map overlays. The major asset class is real estate and thus, developing the real estate strategy required substantial attention.

Accounting/Auditing: Applicant spent 407 hours in this category. Applicant assisted Debtor in Possession for a period of 15 months helping to set up and backfill a complete QuickBooks accounting from scratch including Monthly Operating Reports. In doing so, Applicant was required to separate personal and business items and implement all accounting operations. The process was time consuming since there was no accounting staff to assist with the tasks. Applicant created financial statements and a chart of accounts in QuickBooks manually. A difficult task to tackle without any prior accounting system and required obtaining all records, receipts, and bank statements. Applicant also was required to determine the treatment of pre and post-petition items that included non-default and default interest, property taxes, and fees.

Business Analysis: Applicant spent 5.6 hours in this category. Applicant assisted with Debtor in Possession with a detailed analysis of its business, which was used for development of MORs and other purposes.

Claims Administration and Objections: Applicant spent 14.6 hours in this category. Applicant assisted with Debtor in Possession with the analysis of the claims register and individual claims for both beginning work for acceptance or rejection. Additional time was spent reconciling the filed claims with the proposed plan.

Plan and Disclosure Statement: Applicant spent 5.1 hours in this category. Applicant assisted with Debtor in Possession with reviewing the actions related to the Plan and Disclosure Statement involving amendments, financial impacts including taxes, Monthly Operating Reports, and payment to creditors. These tasks required correspondence in person, by telephone, over email, and through documentation that required multiple drafts. Much of the time was spent creating multiple cash budgets requiring approval by creditors and a proposed Plan Administrator.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Bailey                                       | 219.40      | \$425.00           | \$93,245.00  |
| English                                      | 1.90        | \$425.00           | \$807.50   |
| Geary  | 699.20      | \$325.00           | \$227,240.00   |
| <b>Total Fees for Period of Application</b>  |             |                    | <b>\$321,292.50</b>                                      |

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.

| <b>Application</b>   | <b>Interim Approved Fees</b> |
|--|------------------------------|
| First Interim  | \$15,021.00                  |
| <b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b> | <b>\$15,021.00</b>           |

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,717.75 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b> | <b>Cost</b> |
|----------------------------|-------------|
|----------------------------|-------------|

|                    |                   |
|--------------------|-------------------|
| IT Services        | \$810.00          |
| Mileage (IRS Rate) | \$790.34          |
| Parking            | \$15.00           |
| Transportation     | \$66.20           |
| <b>Total Costs</b> | <b>\$1,681.54</b> |

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

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$321,292.50 are approved pursuant to 11 U.S.C. § 331, and prior Interim Fees in the amount of \$15,021.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator from the available funds of Plan Funds in a manner consistent with the order of distribution in a Chapter 11 under the confirmed Plan.

In considering these fees, the court notes that this is an extraordinary request for an extra-ordinary bankruptcy case. Though the Debtor in Possession remained “in control” and the creditors did not seek the appointment of a trustee, the Debtor in Possession did not possess the ability (or confidence of creditors) to fulfill the duties of a debtor in possession on his own.

Given that this is by all counts a serious surplus bankruptcy estate with significant monies being returned to the Debtor at the end of the confirmed Chapter 11 Plan, the creditors and court allowed the Debtor in Possession to retain the services of such professionals to allow the Debtor in Possession to administer the bankruptcy estate with the assistance of such professionals (who owe their own independent fiduciary duties to the bankruptcy estate) - with the Debtor ultimately paying such professionals from a reduction in the surplus from the bankruptcy estate.

### **Costs & Expenses**

Second and Final Costs in the amount of \$321,292.50 pursuant to 11 U.S.C. § 331 and prior Interim Costs in the amount of \$1,681.54 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and the costs allowed by the court.

Applicant is allowed, and the Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

|                    |              |
|--------------------|--------------|
| Fees               | \$321,292.50 |
| Costs and Expenses | \$1,681.54   |

pursuant to this Application and prior interim fees of \$15,021.00 and 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 Howard Bailey of Arch & Beam Global, LLC (“Applicant”), Financial Advisor for Jeffrey Edward Arambel, 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 Howard Bailey of Arch & Beam Global, LLC is allowed the following fees and expenses as a professional of the Estate:

Howard Bailey of Arch & Beam Global, LLC, Professional employed by Debtor in Possession

Fees in the amount of \$321,292.50

Expenses in the amount of \$1,681.54,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as a professional for Debtor in Possession.

The fees and costs pursuant to this Motion, and fees in the amount of \$15,021.00 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 Plan Administrator under the confirmed plan is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

5. [18-90029](#)-E-11  
[MF-43](#)

JEFFERY ARAMBEL  
Matt Olson

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF MACDONALD  
FERNANDEZ LLP FOR MATTHEW J.  
OLSON, DEBTORS ATTORNEY(S)  
9-26-19 [\[984\]](#)**

**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).**

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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, creditors, and Office of the United States Trustee on September 26, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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| <b>The Motion for Allowance of Professional Fees is granted.</b> |
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Macdonald Fernandez LLP, the Attorney ("Applicant") for Jeffrey Edward Arambel, 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 June 1, 2018, through September 10, 2019. The order of the court approving employment of Applicant was entered on March 9, 2019. Dckt. 141. Applicant requests fees in the amount of \$282,486.00 and costs in the amount of \$9,020.31.

## APPLICABLE LAW

### Reasonable Fees

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

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

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

### Lodestar Analysis

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

### Reasonable Billing Judgment

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



Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

© 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 retention of professionals, asset investigation, use of cash collateral, obtaining financing, the use, sale or lease of assets, claims analysis, developed plan and sought confirmation, litigated adversary proceedings and contested matters, assisted with case administration, and prepared the fee application.

This will be a surplus bankruptcy estate, with all creditors being paid in full and substantial assets being returned to the Debtor after the Plan is completed. Substantial work was required of counsel and other professionals of the estate in assisting the Debtor in Possession. Some of these arose from the pre-petition bad blood that existed between the Debtor and creditor family members, with some of the family members clearly making decisions and opposing efforts to turn property of the bankruptcy estate in this case to pay secured claims (to those family members). It appears that the ill will between these creditor family members and the Debtor was and is based on the “history” with the Debtor (this ill-will including opposing motions that would pay the family member’s secured claim in full). Some of the challenges arose because the Debtor, in serving as the fiduciary to the bankruptcy estate Debtor in Possession, believed that some of his pre-bankruptcy “business as usual” practices could continue as he served as a fiduciary of the bankruptcy Estate. Counsel and the other professionals were successful in disabusing the Debtor in Possession of such notion. No creditors sought the appointment of a Chapter 11 trustee.

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.

Retention of Professionals: Applicant spent 24.7 hours in this category. Applicant assisted with obtaining authority from the Court to employ the following professionals: Braun International real estate broker for the Estate, Jay Crom as accountant for the estate, G. Demos as real estate advisor, and assisted with the preparation of other professionals interim fee applications. Further, the Applicant prepared a modified supplemental employment application for Business Capital.

Efforts to Assess and Recover Property of the Estate: Applicant spent 6.1 hours in this category. Applicant assisted with finding the assets associated with the Estate, including various real property assets, claims for crop insurance, and funds in escrow for a pre-petition sale of land to LBA.

Cash Collateral: Applicant spent 74.8 hours in this category. Applicant assisted with obtaining authority to use cash collateral, budgeting, advising Debtor in Possession, dealing with problems associated with payment of money from third parties to the estate that were subject to liens of different creditors, and assisting with payment of cash collateral to American AgCredit after foreclosure of some of the real properties of the estate.

Debtor In Possession Financing: Applicant spent 15 hours in this category. Applicant assisted in obtaining debtor-in-possession financing in connection with a proposed settlement with Summit.

Relief From Stay Matters: Applicant spent 90.6 hours in this category. Applicant assisted with a stipulation for relief from stay with American AgCredit, defended a motion for relief from stay brought by Irrigation Design and Construction—including a one day evidentiary hearing, negotiated a stipulation for adequate protection following the filing of a motion for relief from stay, and defended a motion for relief from stay brought by Benjamin Lopez.

Use, Sale or Lease of Assets: Applicant spent 167.2 hours in this category. Applicant assisted with getting Court authority to sell real property—including two tracts of land in the Arambel Business Park, as well as the Maring, Ellery, and Grayson Ranches. Additionally, Applicant assisted with resolving bankruptcy issues regarding the proposed sale of other parcels of real property, and monitoring the liquidation of important estate assets by determining sales strategy, valuation, and timing.

Claim Analysis and Objections: Applicant spent 99.6 hours in this category. Applicant assisted Debtor in Possession with the following: analysis of LBA's claim to funds from a pre-petition sale held in escrow, negotiations related to Benjamin Lopez's claim, solved claims for administrative expenses, and analyzed and objected to Arnaud and Filbin creditors' claims.

Plan and Disclosure Statement: Applicant spent 338.1 hours in this category. Applicant assisted with developing the plan of reorganization and disclosure statement and obtaining their approval and confirmation including, extensive negotiation with creditors, analysis of plans, and integration of multiple settlements with multiple creditors. The proposed plan as developed by the Firm was confirmed with only minor modifications.

Other Adversary Proceedings and Contested Matters: Applicant spent 54.3 hours in this category. Applicant assisted with other adversary proceedings that do not fit in other categories. Specifically, the Firm defended a dischargeable complaint brought by Mr. Lopez, advised the Debtor regarding a settlement with Summit, drafted a complaint against LBA, and managed other miscellaneous matters.

Case Administration: Applicant spent 95.8 hours in this category. Applicant assisted with the administration of the present case including evaluating Debtor in Possession's operations, reviewing and filing monthly operation reports and other reports, drafting status reports, handling bank account issues, coordinating with professionals, and developing and implementing an overall strategy for the management of the case.

Fee Application: Applicant spent 13.3 hours in this category. Applicant prepared and obtained approval of its first interim fee application.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Iain Macdonald                               | 99.3        | \$375.00           | \$37,237.50  |
| Reno Fernandez                               | 64.1        | \$375.00           | \$24,037.50  |
| Matthew Olson                                | 786.0       | \$275.00           | \$216,150.00   |
| Daniel Vaknin                                | 16.8        | \$230.00           | \$3,864.00   |
| Samantha Brown                               | 13.3        | \$90.00            | \$1,197.00   |
| <b>Total Fees for Period of Application</b>  |             |                    | \$282,486.00   |

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.

| <b>Application</b>   | <b>Interim Approved Fees</b> | <b>Interim Fees Paid</b> |
|--|------------------------------|--------------------------|
| First Interim  | \$179,340.15                 | \$117, 906.03            |
| <b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b> | \$179,340.15                 |                          |

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$9,020.31 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$3,31367.

The costs requested in this Application are:

| <b>Description of Cost</b> | <b>Per Item Cost, If Applicable</b> |
|----------------------------|-------------------------------------|
| Bank Wire Fees             | \$15.00                             |
| Conference Bridge          | \$238.39                            |
| CourtCall                  | \$149.40                            |

|   |                   |
|---|-------------------|
| Facsimile (891)                                 | \$89.10           |
| FedEx   | \$653.21          |
| Filing Fee                                      | \$700.75          |
| In-House Photocopies<br>(11,325)                | \$1,132.50        |
| Meals (Witness<br>Preparation)                  | \$83.84           |
| Mileage, Tolls, &<br>Parking                    | \$362.43          |
| Outside Photocopies &<br>Mailing                | \$4,301.56        |
| Postage   | \$1,289.13        |
| UCC Search                                      | \$5.00            |
| <b>Total Costs Requested<br/>in Application</b> | <b>\$9,020.31</b> |

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

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$282,486.00 and prior Interim Fees in the amount of \$40,701.12 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

### **Costs & Expenses**

Second and Final Costs in the amount of \$9,020.31 pursuant to 11 U.S.C. § 331 and prior Interim Costs in the amount of \$3,313.67 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and the costs allowed by the court.

Applicant is allowed, and the Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

|                    |              |
|--------------------|--------------|
| Fees               | \$282,486.00 |
| Costs and Expenses | \$9,020.31   |

pursuant to this Application and prior interim fees of \$179,340.15 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 Macdonald Fernandez LLP, the Attorney (“Applicant”), Attorney for Jeffrey Edward Arambel, 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 Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez LLP, Professional employed by Debtor in Possession

Fees in the amount of \$282,486.00  
Costs and Expenses in the amount of \$9,020.31,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 330.

The fees and costs pursuant to this Motion, and fees in the amount of \$176,026.48 and costs of \$3,313.67 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 Plan Administrator under the confirmed plan is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 under the confirmed Plan.

**Final Ruling:** No appearance at the October 17, 2019 hearing is required.

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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 Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2019. By the court’s calculation, 36 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.

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| <b>The Motion to Compel Abandonment is granted.</b> |
|---|

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 Jaime Gomez, Jr. And Teresa Esquivez (“Debtor”) requests the court to order Irma Edmonds (“the Chapter 7 Trustee”) to abandon the debtor’s business, identified as Central Valley Tow and Haul (the “Business”), including property used in the business identified and valued as follows:

| Asset                                 | Value      | Liens      | Exemption  | Non-Exempt Value |
|---------------------------------------|------------|------------|------------|------------------|
| The Business                          | \$0        | \$0        | \$0        | \$0              |
| Accounts Receivables for the Business | Not listed | Not listed | Not listed | \$0              |

|                               |             |             |            |     |
|-------------------------------|-------------|-------------|------------|-----|
| 2009 Western Walk-In Trailer  | \$14,000.00 | \$14,031.40 | \$0        | \$0 |
| 2018 PJ Trailer               | \$8,000.00  | \$0         | \$8,725.00 | \$0 |
| International big rig truck   | \$8,000.00  | \$14,787.40 | \$1.00     | \$0 |
| <b>Total NonExempt Equity</b> |             |             |            | \$0 |

The court determines that the Business, including the (1) 2009 Western Walk-In Trailer; (2) 2018 PJ Trailer; and (3) International big rig truck, are of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The Debtor did not list any accounts receivables on the Schedule A/B. On Part 5, Question 38 of Amended Schedule B, Debtor indicates there are no accounts receivable. Therefore, that property is not abandoned and the Motion is denied as to the accounts receivable of the Business.

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 Jaime Gomez, Jr. And Teresa Esquivel ("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 listed on Schedule A/B and identified as follows:

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|--|
| Debtor's business, identified as Central Valley Tow and Haul ( the "Business") |
| 2009 Western Walk-In Trailer   |
| 2018 PJ Trailer  |
| International big rig truck  |

by Debtor is abandoned by the Chapter 7 Trustee, Irma Edmonds ("Trustee") to Jaime Gomez, Jr. And Teresa Esquivel by this order, with no further act of the Trustee required.

**IT IS FURTHER ORDERED** that the request to order the abandonment of any accounts receivable of the Business is denied without prejudice.

**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).**  
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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 creditors holding the twenty largest unsecured claims, and creditors, on October 2, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**The Motion to for Authority to Borrow is XXXXXX.**

United Charter, LLC, debtor in possession ("Debtor in Possession") seeks permission to borrow funds sufficient to pay all creditors in full. The proposed creditor is Grand Pacific Financing Corporation ("Proposed Lender"). The motion summarizes the terms of the loan as follows:

Loan Amount: \$5.2 million maximum (Recital "A")

Disbursements:

a) Holdback Loan Proceeds: \$2.5 million maximum (Article I, Section 1.1)

1) Advances for Renovations: \$1.97 million (Id.) This amount is to be used solely for the purpose of paying any Workmen engaged in



the renovation of Improvement in connection with the Renovations.  
Section 3.13

2) Renovation Reserve: \$280,000 (Id.)

3) Payment Reserve: \$250,000 (Id.) This reserves is expected to pay for about two years of property taxes and insurance premiums.  
Section 3.14.4.

b) Payment of Lenders:

1) \$1.7 million to East-West Bank; and

2) \$900,000 to Wayne Bier

Loan Fee and Closing Costs: Estimated at \$100,000, fully paid from Loan Proceeds (Article III, Section 3.1.1).

Motion, p. 3:3-16; Dckt. 454.

The Motion further discusses the terms and conditions of the loan on 6 and 7 of the Motion, which the Debtor in Possession states as:

Interest Rate: Prime plus 3.25%

Payment Terms: Interest only payable monthly in arrears.

Maturity: Two years, subject to multiple conditional extensions upon payment of a fee.

Borrowing Limits: \$5.2 million with specific allocation described above.

Events of Default: Loan Agreement, Article V

Liens: Loan Agreement, Section 3.11 (a first priority security interest in all real property of the DIP, all leases, all existing and future tangible and intangible personal property and/or fixtures owned by the DIP) and Section 3.7 (assignment to lender of all of DIP's deposit accounts).

Borrowing Conditions: Loan Agreement, Section 3.2.1 It is a condition to such dismissal that: a) the Motion to Borrow is granted and Grand Pacific has funded the proposed loan in full; and b) all the above claims are paid as allowed by the Court. The Grand Pacific loan is also conditioned, however, upon dismissal of the case and the expiration of any appeal period following entry of an order dismissing the case. This creates a timing issue that is discussed below at p. 9:19-26.

Bankruptcy Rule 4001(c)(1)(B) also identifies eleven types of provisions that must be specifically identified and discussed in the Motion if the proposed loan includes such provisions. Although the DIP does not believe that Bankruptcy Rule 4001(c)(1)(B) applies to refinance loans such as the Grand Pacific loan that is conditioned upon payment of creditors in full and dismissal of the case, the DIP complies with the Rule as follows:

(i) The loan grants Grand Pacific a first priority lien on all property of the estate under 11 U.S.C. §364(c)(2) to replace the existing liens encumbering such property in favor of EWB and Bier;

(ii) The prepetition claims of EWB and Bier are adequately protected by payment of those claims in full from the Grand Pacific loan proceeds, supplement if needed by the DIP's cash collateral reserves;

(iii) The proposed refinancing does not directly include any determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim. If the proposed financing is approved, however, it will have the effect of paying off the EWB and Bier loans in full.

(iv) The proposed refinancing contains no waiver or modification of any Bankruptcy Code provisions or applicable rules relating to the automatic stay;

(v) The proposed refinancing contains no waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under §363(c), or request authority to obtain credit under §364;

(vi) The proposed refinancing does not establish deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) The proposed refinancing contains no waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) The proposed refinancing does not contain a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) The proposed refinancing does not require the indemnification of any entity, other than the indemnifications set forth in Section 7.3 of the Loan Agreement and in Exhibit I;

(x) The proposed refinancing does not contain a release, waiver, or limitation of any right under Section 506(c);

(xi) The proposed refinancing does not grant a lien on any claim or cause of action arising under §§544, 545, 547, 548, 549, 553(b), 723(a) or 724(a).

## **OPPOSITION OF EAST WEST BANK**

East West Bank (“EWB”) filed a limited Opposition. Dckt. 462. EWB points to a loan term not summarized above which requires the court to dismiss this bankruptcy case and then only after it is dismissed, with Grand Pacific proceed with the loan sought by the Debtor in Possession.

EWB states that the \$1,700,000 identified to pay its secured claim is less than what is owed (which EWB computes to be in excess of \$1,760,000), so that EWB asserts that the funding is insufficient to pay its claim.

## **MOTION FOR AUTHORITY TO BORROW**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Motion states that Grand Pacific has provided a loan “commitment” upon which the requested relief is based. Motion ¶ 5, Dckt. 454. No copy of such commitment or the terms and conditions of such “commitment” is provided.

The Motion discusses a dispute between EWB and the Debtor in Possession as to the correct computation of EWB interest on its claim. Debtor in Possession states that an agreement existed for the payment of interest at prime plus 2%, rather than prime plus 5.5% default interest. The Debtor in Possession theorizes that this claim for higher interest is based on a non-binding bankruptcy court and then district court decision on appeal in the Central District of California.

It appears that EWB is stating that it prefers for the Debtor in Possession to proceed with the cost and expense of a plan, modify its obligation through a Chapter 11 Plan, and then pay that modification from a post-confirmation refinance. In such a situation, it would appear that EWB may be desiring to incur what would otherwise be unnecessary legal fees and expenses, delay getting paid, and causing the estate to incur the additional costs and expenses of confirming a plan.

Or, it may be that EWB and the Debtor in Possession desire the Debtor in Possession to commence an adversary proceeding for the parties to litigate the correct computation of interest under its obligation, with the prevailing party in that adversary proceeding seeking to recover its reasonable attorneys’ fees and costs from the other.

Also, the lender conditions the loan on either a confirmed plan or a dismissal - excluding the obvious debtor in possession financing. If provided as debtor in possession financing, it could be conditioned upon the claims (including the undisputed portion of the EWB claim) and administrative expenses paid and the case dismissed, or if the case needed to remain open, the Property abandoned to the Debtor, the disputed portion of the EWB claim (plus a cushion for possible attorneys' fees and expenses) could then be held by the court or deposited into an interest bearing account pending conclusion of the adversary proceeding or objection to claim if the parties proceed with an abandonment of the property to the Debtor rather than dismissal.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**

## **MOTION TO DISMISS**

In addition to the request for approval of financing, the Motion requests the court approve conditional dismissal of the case.

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b). Furthermore, Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules."

The Motion does not provide any authority to bring multiple requested reliefs. Not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l). As discussed above, the court has granted the request for approval of financing. However, the request for additional relief 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 to Incur Debt filed by United Charter, LLC ("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 **XXXXXXXXXXXXXXXXXXXX**.

**IT IS FURTHER ORDERED** that the request for conditional dismissal of the case is denied without prejudice.

## FINAL RULINGS

8. [09-90311-E-7](#) **BRIAN/PATTY CARROLL** **MOTION FOR COMPENSATION FOR**  
[SSA-8](#) **G. Michael Williams** **MARIA STOKMAN, ACCOUNTANT(S)**  
**9-25-19 [161]**

**Final Ruling: No appearance at the October 17, 2019 Hearing is required.**

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**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).**

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2019. By the court's calculation, 22 days' notice was provided. 14 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The amount of fees request are of such a modest amount and sufficiently documented, that little utility will be served by conducting a hearing. The defaults of the non-responding parties in interest are entered.

If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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| <b>The Motion for Allowance of Professional Fees is granted.</b> |
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Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc., the Accountant (“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 April 13, 2019, through June 12, 2019. The order of the court approving employment of Applicant was entered on May 3, 2019. Dckt. 156. Applicant requests fees in the amount of \$650.00.

## **APPLICABLE LAW**

### **Reasonable Fees**

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

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

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

### **Lodestar Analysis**

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

*Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- © 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 analysis and case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **FEES REQUESTED**

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

General Case Administration: Applicant spent .3 hours in this category. Applicant reviewed correspondence regarding filing tax returns.

Tax Analysis and Preparation of Returns: Applicant spent 1.9 hours in this category. Applicant analyzed whether tax returns were required and reviewed provided documents pertaining to settlement proceeds.

Fee and Employment Application: Applicant spent .4 hours in this category. Applicant reviewed this Fee Application and prepared time records therefor.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| Maria Stockman                               | 2.6         | \$250.00           | \$650.00   |
| <b>Total Fees for Period of Application</b>  |             |                    | \$650.00   |

## **FEES 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 \$650.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

|      |          |
|------|----------|
| Fees | \$650.00 |
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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 Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc., (“Applicant”), Accountant for Michael McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc., is allowed the following fees and expenses as a professional of the Estate:

Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc., professional employed by the Chapter 7 Trustee,



Fees in the amount of \$650.00,

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

9. [19-90608](#)-E-7

**BRENDA BARRON**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-19-19 [\[27\]](#)**

**Final Ruling:** No appearance at the October 17, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on September 21, 2019. The court computes that 26 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 July 2, 2019.

**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.