UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 20, 2016, at 10:30 a.m.

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1. **16-90401-E-11 WFH-2** | **NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston** | **MOTION FOR ORDER AUTHORIZING REJECTION OF EMPLOYMENT AGREEMENT OF TORREN K. COLCORD** **O.S.T.** **10-6-16 [93]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2016. By the court's calculation, 14 days' notice was provided.

The Motion for Order Authorizing Rejection of Employment Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The 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. 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 Order Authorizing Rejection of Employment Agreement is granted.

Russell Burbank, the Chapter 11 Trustee, filed this Motion to reject the employment contract of Torren Colcord. The Trustee asserts that National Emergency Medical Services Association, Inc. ("Debtor")

entered into an employment agreement with Mr. Colcord (Exhibit A, Dckt. 96) on October 28, 2010. The five-year agreement includes a base salary of $150,000.00 per year; the possibility of annual salary increases; and health, welfare, and fringe benefits. The agreement seems to have been modified in 2015 to set the base salary at $100,000.00 per year. Following the initial five-year term, the agreement would continue on a year-to-year basis, unless either party provides notice of wishing to modify the agreement. The agreement forbids Debtor from terminating Mr. Colcord's employment without a showing that he "committed acts of gross misconduct or, gross negligence."

Since being appointed, the Trustee has determined that Debtor has gross monthly income of approximately $18,500.00. Mr. Colcord's monthly compensation costs the estate $8,333.00 per month. The Trustee believes that there is not sufficient revenue on hand to pay Mr. Colcord in the future, and furthermore, the Trustee is not convinced that Mr. Colcord's contributions to the company justify his salary.

The Trustee has entered into an agreement with NAGE—subject to court approval—under which NAGE would take over operating the Debtor. If that agreement is approved, Debtor will have no further obligations that require the employment of Mr. Colcord.

11 U.S.C. § 365(a) allows the Trustee to reject any executory contract of the debtor, subject to court approval. In the Ninth Circuit, courts apply the business judgment rule when reviewing a trustee's decision to reject an executory contract. *See In re Pomona Valley Medical Group*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* at 670. Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Here, the Trustee has demonstrated several sound business judgment reasons for rejecting Mr. Colcord's employment agreement with Debtor. First, the Trustee has established that Mr. Colcord's salary cuts deeply in the Debtor's gross monthly income. Second, the Trustee has alleged that Mr. Colcord's contributions to the company merit his current salary, which leads into the third point. If the court approves of NAGE taking control of Debtor's business operations, then Mr. Colcord would not be making any contributions to the company, at least none that the court has evidence of or sees.

Mr. Colcord's employment agreement with Debtor is burdensome to the ongoing operations of the company, and the court believes that the Trustee has acted with sound business judgment in seeking to reject the employment agreement. The motion is granted, and the employment agreement is rejected.

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 Order Authorizing Rejection of Employment Agreement filed by Russell Burbank, 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 the Motion for Order Authorizing Rejection of Employment Agreement is granted, and the employment agreement between National Emergency Medical Services ("Debtor") and Torren Colcord is rejected in its entirety.

2.	**16-90109-E-7** **ICE-1**	**JACOB MCCORMACK** **Kathleen Crist**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JACOB MCCORMACK** **9-16-16 [19]**

Final Ruling: No appearance at the October 12, 2016 hearing is required.

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

Correct 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 September 16, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Approve 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 (14) 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 Approval of Compromise is granted.

Irma Edmonds, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Jacob McCormack ("Settlor"). The claims and disputes to be resolved

by the proposed settlement relate to a preferential payment in the amount of $4,000.00 made by Settlor to relative, Linda McCormack.

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 is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 21):

A. Settlor shall make two payments to Movant, each in the amount of $2,000.00.

Neither the Motion nor the Settlement Agreement (Dckt. 21) state when the two payments of $2,000.00 each are to be made to the Trustee. From the face of the pleadings and Settlement Agreement, it could appear that Debtor has until the end of time to pay the $4,000.00.

Fortunately, though not stated in the Motion or Settlement Agreement, in her declaration, the Trustee states under penalty of perjury, "5. The Trustee submits that she has been paid in full $4,000.00." Declaration ¶ 5, Dckt. 22. The court accepts this statement under penalty of perjury that the Trustee has in her possession the full $4,000.00 settlement payment from Settlor.

B. By accepting payment, Movant agrees to accept the payments in full satisfaction of recovering Settlor's preferential payment.

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 Construction)*, 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 Committee for Independent Stockholders 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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met. The proposed settlement permits the Movant to immediately recover the $4,000.00 made as a preferential payment.

Probability of Success

Movant believes that the likelihood of success high, but it is obviated by the settlement reached between the parties. The settlement provides exactly the amount that Movant contends was owing at the time of filing the bankruptcy case.

Difficulties in Collection

Movant asserts that there is no difficulty in collection because the $4,000.00 has already been paid promptly.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs because of mixed questions of law and fact.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the compromise provides secures the exact amount that Movant said was owing.

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. 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 Irma Edmonds, the 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 to Approve Compromise between Movant and Jacob McCormack ("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 Ain support of the Motion (Dckt. 21).

3. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)**
WFH-30 **George Hollister** **9-29-16 [672]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Compensation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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 hearing on the Motion for Compensation is granted.

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

The period for which the fees are requested is for the period July 31, 2015, through June 30, 2016. The order of the court approving employment of Applicant was entered on August 29, 2013. Dckt. 92. Applicant requests fees in the amount of $306,169.15 and costs in the amount of $22,723.02.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958.

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including settling or resolving preference actions against twenty-two defendants. The estate has $526,766.56 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and are 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.

Asset Analysis and Recovery: Applicant spent 0.50 hours in this category. Applicant assisted Client with evaluating the feasibility of continued efforts to collect on accounts receivable.

Avoidance Action Analysis and Other Contested Matters: Applicant spent 647.20 hours in this category. Applicant represented the Trustee in all aspects of the preference recovery litigation; negotiated and filed discovery plans; attended status conferences; and responded to and prevailed on a Motion to Dismiss, Motion for Summary Judgment, and Motion for Partial Summary Judgment.

Avoidance Action Analysis (Settlement): Applicant spent 152.40 hours in this category. Applicant engaged in settlement negotiations regarding the preference actions, documented settlements, and obtained court approval of those settlements. Applicant represented the Trustee in settling with seventeen defendants for $329,359.58.

Fee/Employment Applications: Applicant spent 47.70 hours in this category. Applicant filed and prosecuted a fee application and applications to employ professionals, including Californsics/California Digital as an electronic discovery expert.

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**
Daniel Egan	579.00	$395.00	$228,705.00
Anthony Eaton	46.80	$320.00	$14,976.00
Anthony Eaton	205.30	$330.00	$67,749.00
Steven Williamson	2.50	$320.00	$800.00
Rickaye Harris	1.50	$125.00	$187.50
(Less Discount)			($6,248.35)
Total Fees For Period of Application			$306,169.15

Pursuant to prior Interim Fee Applications, the court has approved fees 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	$190,198.00	$158,558.40
Second Interim	$306,169.15	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$496,367.15	

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $22,723.02, pursuant to this applicant. Pursuant to prior interim applications, the court has allowed costs of $15,538.52.

The costs requested in this Application are:

Description of Cost	**Cost**
Postage	$1,667.70
Filing Fees	$10,850.00

Photocopies	$4,400.80
ACE Attorney Services	$1,341.00
DLE Express	$346.97
Federal Express	$89.31
Production of Document Fees	$185.05
Witness Fees	$195.29
Court Reporter Fees	$3,646.90
Total Costs Requested in Application	$22,723.02

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 Interim Fees in the amount of $306,169.15, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, are approved, and prior Interim Fees in the amount of $31,639.60 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs and Expenses

The Second Interim Costs in the amount of $22,723.02, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	$306,169.15
Costs and Expenses	$22,723.02

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Applicant"), Attorney for the 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Professional Employed by Trustee

Fees in the amount of $306,169.15
Expenses in the amount of $22,723.02,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $328,892.17 approved pursuant to this Interim Application are approved as interim fees and costs pursuant to 11 U.S.C. § 331.

IT IS FURTHER ORDERED that the Trustee is authorized to pay 80% of the fees and 100% of the expenses approved by this by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO PAY**
WFH-34 **George Hollister** **10-3-16 [677]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2016. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Pay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. 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 Pay is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion on August 15, 2016. The Trustee requests authorization to pay $988.77 in state corporate tax interest and penalties for 2014 and 2015 to claimant State of California, pursuant to the State's Request for Payment of Administrative Expense (Exhibit A, Dckt. 680). Additionally, the Trustee requests authorization to pay $800.00, plus interest and penalties, for the minimum corporate tax due for the tax year ending in September 2017 and $800.00 plus interest and penalties, for the minimum corporate tax due for the tax year ending in September 2018. Lastly, the Trustee requests an order ratifying his payment of administrative tax claims of the State of California for the tax years ending in September 2014 and September 2015.

The Trustee states that the estate has $555,066.56 currently, and the Trustee believes that such amount is more than sufficient to pay all administrative claims in full.

DISCUSSION

Section 503(b)(1)(C) of the Bankruptcy Code accords administrative expense status to any fine, penalty, or reduction in credit that relates to a tax allowed as an administrative expense under 11 U.S.C.

§ 503(b)(1)(B). The Ninth Circuit Court of Appeals has held that Code is ambiguous on the question of administrative priority for interest on taxes incurred by the estate, partly because section 503(b)(1)(C) is silent on that issue. *See United States v. Ledlin (In re Mark Anthony Construction, Inc.)*, 886 F.2d 1101 (9th Cir. 1989). When faced with such ambiguity, the court ruled that interest on post-petition taxes was properly given administrative expense status because administrative treatment clearly was the law before the enactment of the Code. *See id.* The Ninth Circuit cited Supreme Court doctrine that no change from prior law is presumed when a status is ambiguous and legislative intent is unclear. *See id.* That approach has been followed subsequently in other circuits. *See United States v. Yellin (In re Weinstein)*, 272 F.3d 39 (1st Cir. 2001); *United States v. Flo-Lizer, Inc. (In re Flo-Lizer, Inc.)*, 916 F.2d 363 (6th Cir. 1990); *In re Allied Mechanical Servs., Inc.*, 885 F.2d 837 (11th Cir. 1989); *see also Rupp v. United States (In re Rocky Mountain Refractories)*, 208 B.R. 709 (B.A.P. 10th Cir. 1997).

The Trustee having presented evidence of an administrative expense owed to the State of California, and having requested authorization to pay such future expenses, 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 Pay filed by Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Trustee is authorized to pay $988.77 to the State of California in satisfaction of its claim.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay $800.00, plus interest and penalties, for State of California corporate taxes due for the tax year ending in September 2017, and $800.00, plus interest and penalties, for State of California corporate taxes due for the tax year ending in September 2018.
>
> **IT IS FURTHER ORDERED** that the Trustee's payments of administrative tax claims to the State of California for the tax years ending in September 2014 and in September 2015 are ratified by the court.

5. **11-90719-E-7** **DOUGLAS CHAPMAN** **MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.**
MSN-2 **Mark Nelson** **O.S.T.**
10-4-16 [26]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 4, 2016. By the court's calculation, 16 days' notice was provided. The court required 16 days' notice. Dckt. 31. FN.1

FN.1. Even though Debtor moved for an order shortening time, Debtor actually noticed the hearing for this motion according to Local Bankruptcy Rule 9014-1(f)(2), which requires fourteen days' notice. Dckt. 27.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Douglas Chapman ("Debtor") commonly known as 1712 Irene Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,747.54. Exhibit A, Dckt. 29. An abstract of judgment was recorded with Stanislaus County on January 20, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $144,000.00 as of the date of the petition. The unavoidable consensual liens that total $158,742.93 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has not claimed an exemption on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 656988, recorded on January 20, 2011, Document No. 2011-0005377-00, with the Stanislaus County Recorder, against the real property commonly known as 1712 Irene Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. **12-90836-E-7** **PATRICIA DAY** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)**
HSM-4 **Pablo Tagre** **9-29-16 [73]**

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.

Correct 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 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. 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.

Hefner, Stark & Marois, LLP, the Attorney ("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.

The period for which the fees are requested is for the period March 26, 2013, through October 20, 2016. The order of the court approving employment of Applicant was entered on May 24, 2013. Dckt. 28. Applicant requests fees in the amount of $5,000.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958.

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reaching a settlement between the Trustee, the Administrator of the decedent estate, and Debtor's siblings in the sum of $15,000.00 CAD from the Canadian surrogate estate. The estate has $10,793.43 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and are 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.

Asset Investigation: Applicant spent 14.85 hours in this category. Applicant assisted Client with investigating issues related to Debtor's interest in Canadian real estate; communications with Debtor's relatives, probate administrator, and counsel regarding undisclosed real estate and claims of wrongdoing against the debtor; and investing and analyzing issues relating ti multiple competing claims to real property.

Asset Disposition: Applicant spent 102.20 hours in this category. Applicant researched issues in connection with options to protect Canadian real estate; advised and represented Trustee in connection with negotiations with Canadian estate administrator; telephonic and court appearances in Alberta; opposed and replied to motions filed in Alberta court in effort to sell real property; advised and represented Trustee in settlement discussions and reached a settlement with the estate administrator; and represented Trustee in connection with post-settlement performance issues.

Litigation: Applicant spent 14.20 hours in this category. Applicant Drafted complaint and prosecuted adversary proceeding seeking revocation of Debtor's discharge; drafted pleadings for entry of Debtor's default judgment and Debtor's default judgment; and reviewed legal and procedural issues in connection with decedent's estate in Alberta.

General Case Administration: Applicant spent 40.35 hours in this category. Applicant analyzed legal and procedural issues related to undisclosed real estate asset in closed bankruptcy case; advised and represented Trustee in connection with the reopening of the bankruptcy case to administer the undisclosed asset; researched issues presented by international component of the case; contested objection Debtor's claim of exemptions covering real estate; performed case initiation service; and advised Trustee regarding assets of the estate and case administration.

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**
Aaron Avery	27.4	$295.00	$8,083.00
Aaron Avery	37.2	$300.00	$11,160.00
Aaron Avery	5.2	$310.00	$1,612.00
David Anderson	76.85	$300.00	$23,055.00
Howard Nevins	1.65	$380.00	$627.00
Howard Nevins	0.8	$390.00	$312.00
Total Fees For Period of Application			$44,849.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $796.99 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		$225.75
Page Telefax	$1.50	$84.00
Express Delivery / Shipping		$346.84
Recording / Filing Fees		$58.00

Telephonic Appearance		$82.40
Total Costs Requested in Application		$796.99

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $5,000.00 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of $5,000.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $5,000.00

pursuant to this Application as first and final interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP ("Applicant"), Attorney for the 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 Hefner, Stark & Marois is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark & Marois, Professional Employed by Trustee
>
> Fees in the amount of $5,000
>
> **IT IS FURTHER ORDERED** that the 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.

7.	**16-90736-E-11** **TBG-2**	**RONALD/SUSAN SUNDBURG** **Edward Smith**	**MOTION TO EMPLOY STEPHAN M. BROWN AS ATTORNEY(S)** **10-5-16 [31]**

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.

Correct 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 October 5, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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 Employ is granted.

Chapter 11 Debtor in Possession, Ronald Sundburg and Susan Sundburg, seeks to employ counsel The Bankruptcy Group, P.C., pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327(a) and 330. Debtor in Possession seeks the employment of Counsel to assist the Debtor in the continued management of property; protecting and preserving the estate; obtaining approval of disclosure statement and confirmation of the Chapter 11 Plan; preparing necessary motions, answers, orders, reports, applications, and other legal papers; appearing in court; and performing all other legal services for the Debtor in Possession that may be necessary and proper.

The Debtor in Possession argues that Counsel's appointment and retention is necessary to preserve the assets of the bankruptcy estate for the benefit of stakeholders.

Stephen Brown, a shareholder of The Bankruptcy Group, P.C., testifies that he has been duly admitted to practice law in the State of California, is admitted to practice before various district and circuit courts including the District Court for the Eastern District of California, and he is representing the Debtor in Possession and the estate. Stephen Brown testifies that he and the firm do not represent or hold any

interest adverse to the Debtor or to the estate and that they have no connection with the Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ The Bankruptcy Group, P.C. as counsel for the Chapter 11 estate on the terms and conditions set forth in the statement pursuant to 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2016, filed as Exhibit A, Dckt. 34. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the 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 to Employ is granted and the Debtor in Possession is authorized to employ The Bankruptcy Group as counsel for the Debtor on the terms and conditions as set forth in the statement pursuant to 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2016, filed as Exhibit A, Dckt. 34.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

8. **12-93049-E-11** **MARK/ANGELA GARCIA** **MOTION TO SELL**
MJH-17 **Mark Hannon** **9-15-16 [849]**

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.

Correct 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 September 15, 2016. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Sell was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Sell is denied without prejudice.

The Bankruptcy Code permits the debtor in possession or trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant is the Plan Administrator/Debtor under the

confirmed Chapter 11 Plan, which Plan requires such court approval, to sell the real property commonly known as 5672 Eleanor Road, Oakdale, California ("Property").

The proposed purchaser of the Property is Interface Investment Capital, LLC , and the terms of the sale are:

A. Purchase price of $675,000.00, with no brokerage fee;

B. Estimated payment to Deutsche Bank of $500,000.00;

C. Estimated payment to United States Fire Insurance of $130,000.00;

D. Closing date set for October 14, 2016;

E. Seller to pay closing costs for:

1. Preparation of the deed to the Property,
2. Title search, title report, and title insurance policy,
3. Property taxes, fees, and assessments,
4. Any real estate agent's commission,
5. Home loans and other debts on the Property but not assumed by Buyer,
6. Judgments, tax liens, or other liens necessary to transfer clean title, and
7. Recording charges for documents necessary to transfer clean title;

F. Buyer to pay closing costs for:

1. Recording documents in Buyer's name,
2. Lender's title insurance premium,
3. New home loan charges or assumption of existing loan charges,
4. Costs associated with financing the purchase of the Property,
5. Notary fees, and
6. All other costs associated with closing unless otherwise stated by the Parties in writing;

G. Each party pays half of escrow fees and half of the Homeowners Association transfer fee;

H. Taxes, assessments, rents, and Homeowners Association dues are to be prorated to Seller up to, but not including, the closing date;

I. Financed entirely by cash; and

J. Governed by California law.

STIPULATION

United States Fire Insurance filed a Stipulation on October 6, 2016. Dckt. 864. The Stipulation states that Debtor in Possession seeks an order to pay counsel Mark Hannon $21,756.00 out of sale proceeds, with the balance of sale proceeds going to United States Fire Insurance, after payment to Deutsche Bank, an agreed amount to Iain MacDonald, property taxes, and costs of sale. United States Fire Insurance does not object and agrees to the sale as long as it receives the remaining net sale proceeds after payments set forth above.

DISCUSSION

As referenced in the USFI "Stipulation," there is a confirmed Chapter 11 Plan in this case. The terms of the confirmed plan govern how the sale proceeds are disbursed. It is unclear how USFI can "stipulate" to have sales proceeds paid to Debtor's counsel.

Disbursement of Monies

The confirmed Chapter 11 Plan in this case provides as follows for the disbursement of monies from the sale of the property. A copy of the Plan is attached to the Order Confirming Plan, Dckt. 781.

A. Class 3 Secured Claim of USFI in the amount of $400,000.00 will be paid in monthly installments of $3,000.00, with interest at 6% per annum, for four years, and then a balloon payment for the remaining obligation to be paid at the end of the four years. Plan Part III: Treatment of Claims, Class 3 (page 6 of Plan).

B. If the property securing the USFI claim is sold, the monies shall be disbursed as follows (the court uses the exact language of the plan):

1. "If the Debtors' residence is sold through this Court, the claim of the first mortgage holder, Deutsche Bank, will be paid in full.

2. The remaining sum, after authorized expenditures, is to be paid to USFI. In that event, USFI has agreed to a 'carve-out' procedure, where 20% of the proceeds payable to USFI are to be paid to unsecured creditors.

3. The court issued an order on July 6, 2015, approving a Settlement that relates to the provisions of the plan. Order and Stipulation attached, pgs. 8–19, Dckt. 741, to which the Settlement Agreement is attached. That Stipulation provides:

a. An amount equal to 80% of the Net Sales Proceeds shall be paid to USFI, up to the allowed amount of its Claim No. 19-3; and

b. An amount equal to 20% of the Net Sales Proceeds shall be paid to the Trustee as the representative of the bankruptcy estate, for the

> payment of administrative claims [presumably expenses allowed pursuant to 11 U.S.C. § 503] and to creditors holding unsecured claims other than USFI and MacDonald ("Carve-Out").
> Stipulation, ¶ 5a. and b.; Dckt. 741.

The Chapter 11 Plan was confirmed on May 6, 2016, after the Stipulation and Order, which was entered a year earlier on July 6, 2015. The Chapter 11 Plan was promoted and championed by YP Advertising & Publishing, LLC ("Creditor YP") and Debtor. The court, as has been demonstrated throughout the record in this case, has determined that Debtor participated in, and appears to have had the lead in the drafting and prosecution of the Chapter 11 Plan that was confirmed.

While subtle, the subsequent plan provision, which has been confirmed by the court and now binds all parties, is different than the stipulation. As part of garnering creditor support, the Plan provides that the 20% carve-out from the sale will be disbursed to creditors holding general unsecured claims—bypassing the normal priority given administrative expenses. Such a bypass is proper in that it is a creditor with the secured claim who is agreeing to the carve-out.

The October 6, 2016 USFI "Stipulation" purports to bypass all of the Plan provisions and Bankruptcy Code and divert $21,756.00 to Debtor's counsel. (This is the amount of the allowed administrative expense for counsel relating to his services as counsel for the former Debtor in Possession before the appointment of a Chapter 11 Trustee.) The Chapter 11 Plan does not give such a super-super priority to Debtor's counsel from the 20% carve-out and USFI's counsel can explain at the hearing the good faith basis for USFI in so "stipulating" and advocating for such a distribution at the hearing on this Motion.

DENIAL OF MOTION

The Motion seeks to sell the property for $675,000.00. The Motion states that there will be no broker's fee. The Motion does not identify the buyer of the property.

A copy of the Real Estate Purchase Agreement is filed as Exhibit A, Dckt. 852. The buyer in the purchase agreement is identified as "Interface Investment Capital, LLC. No person is identified as the representative of Interface Investment Capital, with the Notice provision of the Agreement just identifying the entity and an address of 327 West Springer Dr., Turlock, California. Exhibit A, pg. 8 of Agreement.

The signature block at the end of the agreement does not have the name of the representative of Interface Investment Capital or that person's capacity (President, Vice-President, Managing Member, or the like). The Agreement is strangely ambiguous as to the Buyer.

Debtor Mark Garcia provides his declaration under penalty of perjury in support of the Motion. Dckt. 851. He too fails (or is unwilling) to disclose the identity of the buyer. Additionally, no information is provided for the marketing of this property. It is disclosed that there is no broker's commission, so it appears that no attempt has been made to expose this property to the market and achieve the fair market value. Mr. Garcia's gratuitous comments that the "offer seems to be the fair market value" does not suffice as proper marketing of the property and fulfilling the fiduciary duties of a Plan Administrator under a confirmed Chapter 11 Plan.

For all the court knows, Mark Garcia or Angela Garcia, the Debtors and fiduciary Plan Administrators, may be shareholders, partners, members, or other interest holders in Interface Investment Capital and have failed to disclose that information to the court. From the Secretary of State public records, all the court can identify is that Interface Investment Capital filed its papers with the Secretary of State on May 17, 2016, and that its agent for service of process is "LEGALZOOM.COM." http://kepler.sos.ca.gov/.

The court cannot, and will not, approve a sale to an anonymous entity, especially when no real estate professional has been engaged and there is no evidence presented that the property has been properly marketed in good faith to generate the fair market value of that property. Additionally, that the fiduciary Plan Administrators and their attorney come in and in the guise of a motion to sell attempt to get an order of the court giving a super-super preference to Plan Administrator's/Debtor's counsel that violates the plan (which even if it can be read to have the 20% be used to pay administrative expenses and then general unsecured claims) allows Plan Administrator's/Debtor's counsel's administrative expense to be paid in priority to other equal-in-priority administrative expenses.

The court denies the Motion 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 Sell Property filed by Mark Garcia and Angela Garcia, the 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 to Sell is denied without prejudice.

9. 12-93049-E-11 SDN-4 | **MARK/ANGELA GARCIA** **Mark Hannon** | **MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE BY YP ADVERTISING & PUBLISHING, LLC 9-2-16 [843]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the twenty (20) largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expense 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 (14) 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 Administrative Expense is granted in the amount of $16,061.19 and disallowed for all amounts in excess thereof.

YP ADVERTISING & PUBLISHING LLC, a Delaware limited liability company, formerly known as YP WESTERN DIRECTORY, LLC, a Delaware limited liability company, formerly known as PACIFIC BELL DIRECTORY, a California corporation, the Plan Proponent, ("Creditor YP"), files its motion for allowance of an administrative expense for the legal fees and expenses incurred in making a substantial contribution to this Chapter 11 case. The period for which the fees are requested is October 24, 2014, through July 29, 2016. Creditor YP requests the administrative expense for $45,805.00 in fees and costs in the amount of $1,280.39, for a total of $47,085.39.

TRUSTEE'S RESPONSE

The United States Trustee for the Eastern District of California filed a Response on October 6, 2016. Dckt. 862. The Trustee states that while Creditor YP did make a substantial contribution to this case by obtaining approval of a Disclosure Statement and confirmation of a plan, in the Disclosure Statement (Dckt. 739) Creditor YP stated that "[Creditor YP] estimates filing a claim for fees in the sum of $15,000." This Disclosure statement appears to be a cleaned up version of the original Disclosure Statement filed on

December 3, 2015. Dckt. 704. The Trustee indicates that a fee reduction may be appropriate to the extent the increased fees detrimentally affect the feasibility of the Plan.

CREDITOR YP'S REPLY

Creditor YP filed a Reply to the Response of the United States Trustee on October 13, 2016. Dckt. 866. Creditor YP states that the amount allocated for attorney's fees was only $15,000.00 because that is all the Debtor could afford to pay based on the income, expense, and payout schedules; not because Creditor YP was unaware of the fees and costs incurred by Creditor YP at the time of submitting the Plan. The full amount was not requested because if it had been requested, the Plan would not have been feasible and would have been denied.

Creditor YP is requesting that 1) the excess administrative fees that were not awarded to the Debtor's attorney and 2) not requested by the Trustee's first attorney be reallocated to Creditor YP. Creditor YP indicates that this would have no adverse effect to any creditor or the Debtor. Creditor YP requests an order granting the requested compensation because there were more fees allocated in the Plan than awarded by the court. Creditor YP states that because of this, there should be more than sufficient funds to pay the amount requested by Creditor YP.

STATUTORY BASIS FOR FEES

The consideration of the Motion begins with the Motion itself. In it, Creditor YP and YP Counsel affirmatively state with particularity that the legal basis for being allowed an administrative expense is,

> "Title 11 U.S.C.A. §503(b)(3)(D), provides that a creditor that provides a substantial contribution in a case under chapter 9 or 11 may be compensated and reimbursed actual and necessary expenses."

Motion, p. 2:13–15; Dckt. 843. A review of this specific section specifically excludes any professional fees to be allowed as an administrative expense.

> "(b) After notice and a hearing, there **shall be allowed, administrative expenses**, other than claims allowed under section 502(f) of this title including–
> . . .
> (3) the **actual, necessary expenses**, **other than compensation and reimbursement specified in paragraph (4)** of this subsection, **incurred by**–
> . . .
> (D) **a creditor**, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in **making a substantial contribution in a case under chapter 9 or 11** of this title; . . . ."

11 U.S.C. § 503(b)(3)(D) [emphasis added]. The "paragraph (4)" excepted from the statutory grounds relied upon by Creditor YP and YP Counsel is the section that would allow compensation for an attorney or

accountant of an entity that could seek an administrative expense under 11 U.S.C. § 502(b)(3)(A), (B), (C), (D), or (E).

It appears that this could be just an oversight in the exuberance in filing the Motion. On the other hand, it is consistent with the repeated conduct of Creditor YP and YP Counsel in not correctly applying the law, not correctly citing the law, and seeking relief not permitted by the law. While in some courts there could be perceived a "got ya" game in which a court will blindly grant any relief so long as there is no opposition, the United States Supreme Court has made it clear that federal judges do not issue such orders or judgments that do not comport with the law. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Notwithstanding this error, the court will presume that Creditor YP and YP Counsel are actually seeking an order allowing an administrative expense pursuant to 11 U.S.C. § 506(b)(4), which provides,

> "(b) After notice and hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—
> . . .
> (4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;. . . ."

Person Who May Request Allowance of Administrative Expense

Starting with the "plain language" of the statute, it can be read to say that the attorneys' or accountants' costs and expenses incurred by an "entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3)" may seek to have such fees included as part of the paragraph (3) administrative expense. Thus, the person seeking to be allowed an administrative expense pursuant to 11 U.S.C. § 503(b)(4) must be an entity entitled to an administrative expense under 11 U.S.C. § 503(b)(3). The one possible applicable provision for this situation is 11 U.S.C. § 506(b)(3)(D), for which Client is a "creditor" who asserts to having made a substantial contribution. The necessary costs and expenses are for Client's legal fees that relate to the substantial contribution for advancing the Chapter 11 case. See *In re Olsen*, 334 B.R. 104 (S.D. N.Y. 2005), concluding that only a creditor, or an attorney acting on behalf of a creditor, may apply for and receive attorney's fees as an administrative expense. Professionals usually have to look to their client for payment, not the bankruptcy estate. *See Matter of Consolidated Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir. 1986); *In re U.S. Lines, Inc.*, 103 B.R. 427, 430 (Bankr. S.D. N.Y. 1989), *order aff'd*, 1991 WL 67464 (S.D.N.Y. 1991); *In re McLean Industries, Inc.*, 88 B.R. 36 (Bankr. S.D. N.Y. 1988); *In re Jensen-Farley Pictures, Inc.*, 47 B.R. 557 (Bankr. D. Utah 1985).

The creditor need not incur any other "expense," with the only 11 U.S.C. § 506(b)(3)(D) expense being the attorneys' fees included by the reference to 11 U.S.C. § 506(b)(4). *North Sports, Inc. v. Knupper*

(In re Wind N' Wave), 509 F.3d 938, 945 (9th Cir. 2007); *In re Sedona Institute*, 220 B.R. 74, 79 (B.A.P. 9th Cir. 1998).

The issue of whether it must be the "creditor" (in this case Client) that must seek the allowance of the administrative expense or whether the attorney may do so directly is discussed in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 503.11[4], as follows:

> "Because section 503(b)(4) refers to the entities described in section 503(b)(3), it would appear that the right to request compensation belongs to the client and not to the professional. Under this view, adopted in some cases, the client may request that the professional seek reimbursement on the client's behalf, but the professional may not seek an award of compensation on its own behalf." 16 COLLIER ON BANKRUPTCY ¶ 503.11[4] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) (citing *In re Olsen*, 334 B.R. 104 (S.D.N.Y. 2005) (creditor must incur the fees and only the creditor, or an attorney acting on the creditor's behalf, may apply for an administrative expense under section 503(b)(4)); *In re Glickman, Berkowitz, Levinson & Weiner*, 196 B.R. 297 (Bankr. E.D. Pa. 1996) (court expressed concern that the request was made by the professional and noted that the request should have been made on behalf of the creditor, but treated the request as being made on behalf of the creditor); *In re Oxford Homes, Inc.*, 204 B.R. 264 (Bankr. D. Me. 1997)). The professional "is seeking reimbursement on behalf of the client, and the award only determines what portion of the client's payment obligation will be compensable from the estate as an administrative expense."

However, Collier further notes that this is not a universal view, further stating,

> "Other courts, however, have held that section 503(b)(4) allows attorneys and accountants to apply directly for payment by the estate if they represent a party specified in section 503(b)(3)(A) through (E), and have held that section 503(b)(4) does not require that fees be paid by the client before they may be recovered from the estate as an administrative expense."

COLLIER ON BANKRUPTCY ¶ 503.11[4] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) (citing *In re R.L. Adkins Corp.*, 505 B.R. 770, 779 (Bankr. N.D. Tex. 2014); *In re Mirant*, 354 B.R. 113, 140 (Bankr. N.D. Tex. 2006); *In re Western Asbestos Co.*, 318 B.R. 527 (Bankr. N.D. Cal. 2004) (counsel can seek reimbursement under section 503(b)(4) even if client has not paid and is not obligated to pay the fees)).

As to the latter point, this court does not concur with the proposition that there be no obligation of the creditor for the legal fees for which an administrative expense is to be incurred. While it may be appropriate for the attorney to agree to waive the fees for a consumer client (including providing pro bono services that work to enhance and provide greater access to the judicial process), 11 U.S.C. § 503(b)(4) was not enacted as an attorneys' fee free-for-all provision in which sophisticated creditor clients can throw financial caution to the wind and turn attorneys loose to wreak havoc on bankruptcy cases because it is no cost to the creditor.

The court reads the present Motion to state that it is Client who is requesting the fees and costs as expenses, as a creditor identified in 11 U.S.C. § 506(b)(3)(D), to the extent such administrative expense is proper pursuant to 11 U.S.C. § 506(b)(4). On the Motion itself, YP Counsel states that it is appearing as the attorney for Client, not as the attorney for the law firm. Dckt. 843. The Motion itself states that "Creditor YP, . . ., submits the first and final Application for Compensation . . . for its attorneys Coleman & Horowitt, LLP (the 'Applicant')." *Id.*, p. 1:22–27. The court reads this as more correctly stating,

> "Creditor YP files this motion for allowance of an administrative expense pursuant to 11 U.S.C. § 503(b)(4) for its attorneys' fees and expenses in making a substantial contribution to this bankruptcy case."

Creditor YP's rights should not be prejudiced by the mere use of confusing language or mis-characterizing of the motion as one for "compensation" as opposed to the allowance of an administrative expense.

Persons seeking the allowance of an administrative expense for professional fees and expenses under 11 U.S.C. § 503(b)(4) have the burden of establishing entitlement by a preponderance of the evidence and must support the application with detailed records. *See In re Hanson Industries, Inc.*, 90 B.R. 405 (Bankr. D. Minn. 1988); *In re Richton Intern. Corp.*, 15 B.R. 854 (Bankr. S.D. N.Y. 1981); *see also In re Speeds Billiards & Games, Inc.*, 149 B.R. 434 (Bankr. E.D. Tex. 1993).

Substantial Contribution

While the Code does not define "substantial contribution," it provides the factors to be considered in determining whether a substantial contribution has been made in a case; the primary factor is the extent of the benefit to the estate. *In re* Cellular 101, Inc., 377 F.3d 1092, 1096 (9th Cir. 2004). Other factors considered by the courts include:

A. Whether the services were undertaken solely for the benefit of the party itself or for the benefit of all parties in the case;

B. Whether the services were actions that would have been taken by the party on its own behalf, absent an expectation of reimbursement from the estate;

C. Whether the party can demonstrate that its actions provided a direct, significant, and demonstrable benefit to the estate;

D. Whether the benefit conferred upon the estate exceeds the costs sought to obtain that benefit; and

E. Whether the actions were duplicative of those being taken by other parties in the case, such as the debtor, a trustee, or an official committee.

Creditors who have an active role in the confirmation process frequently seek substantial contribution claims. Participation alone, even in successful plan negotiations will not justify a substantial contribution award. *In re American Plum. & Mech., Inc.*, 327 B.R. 273, 291 (Bankr. W.D. Tex. 2005); *In re AmFin*

Financial Corp., 486 B.R. 827 (Bankr. N.D. Ohio 2012). However, where creditors were essential to the plan process, courts have found substantial contribution by the creditors. *In re 1250 Oceanside Partners*, 519 B.R. 802 (Bankr. D. Haw. 2014).

REVIEW OF MOTION AND SUPPORTING PLEADINGS

As with any request for an order, the court begins with the Motion itself, which must state with particularity not only the relief requested, but the grounds upon which such relief is based. Fed. R. Bankr. P. 9013, 9014. It is asserted that due to the efforts of Creditor YP's counsel the case was saved from a conversion to Chapter 7 in which the creditors would have recovered nothing.

The grounds stated with particularity in the Motion are summarized as follows:

A. Neither the Debtors nor the Chapter 11 Trustee possessed the ability to prosecute a plan in this bankruptcy case.

B. To prevent a conversion to Chapter 7, Creditor YP had its counsel prepare and file a disclosure statement and plan.

C. The disclosure statement was approved and the plan ultimately confirmed on May 6, 2016.

D. The Chapter 11 Plan provides for a 50% payout to creditors holding general unsecured claims.

E. The following legal services were provided by YP Counsel to Creditor YP for which an administrative expense is sought:

1. Drafting disclosure statement, plan and exhibits.

2. Communicating with Debtor's attorney regarding the plan, disclosure statement, and payment of secured claims.

3. Communicating with the Trustee's attorney regarding the disclosure statement and plan.

4. Communicating with other creditor attorneys concerning the proposed plan and disclosure statement.

5. Attending status conferences and confirmation hearings.

6. Reviewing Monthly Operating Reports in conjunction with drafting the disclosure statement and plan.

7. Preparing and filing this application for an administrative expense for the attorneys' fees and costs.

F. The reasonable and necessary fees are in the amount of $45,805.00.

G. The reasonable and necessary costs are in the amount of $1,280.39.

The task billing analysis provided in the Motion discloses that the fees are allocated as follows:

Task Billing Area of Service	Hours Billed for which Administrative Expense Requested	Hourly Rate	Total Dollar amount of Attorneys' Fees or Costs
Hours re Disclosure Statement and Plan	136.42	$250	$34,105.00
Hours re Macdonald Litigation	17.45	$250	$4,362.50
Hours re USFI & G Street	21.45	$250	$5,362.50
Hours re Deutsche Bank	7.90	$250	$1,975.00
House re Legal Research and Conference for Same	79.60	$250	$19,900.00
Total Hours Reported to Have been Expended by YP Counsel and Fees Incurred by Creditor YP	262.82		$65,705.00
Portion of Above Legal Expense For Which Creditor YP Does not Seek An Administrative Expense	Legal Research		($19,900.00)
Total Legal Fees Creditor YP Requests as Administrative Expense			$45,805.00

Sheryl D. Noel, Esq., the attorney who has been appearing in this case for Creditor YP has provided her declaration in support of the Motion for Creditor YP to be allowed an administrative expense. Declaration, Dckt. 845. Her declaration gets off on the wrong foot, stating under penalty of perjury that it is her law firm that is seeking compensation and reimbursement of expenses. Declaration ¶ 4, *Id.*

While Ms. Noel and her law firm may believe that "compensation for an attorney" and "allowance of an administrative expense" are the same thing, they are not. It is this type of lack of bankruptcy law understanding, or willingness to comply with, by Creditor YP, YP Counsel, and counsel for the Debtor in Possession and then the Debtor that has caused this bankruptcy case to be unnecessarily long, drawn out, and expensive.

In considering the value of Creditor YP having its attorneys undertake the work of attorneys for the former Debtor in Possession and the Trustee, the court considers several of the prior rulings in connection with the legal work being advanced as a $45,805.00 administrative expense.

Conduct of Creditor YP and YP Counsel Relating to Proposed Plans and Disclosure Statements

YP Counsel first drafted and floated before the court a plan and disclosure statement on October 29, 2014. Dckts. 425 and 414. Various objections were filed. The court denied approval of the proposed disclosure statement. Civil Minutes, Dckt. 477, with the court's discussion on page 18 of the Minutes. The disclosure statement was grossly inadequate, leaving out such basic information as how taxes were to be paid. The financial information was incomplete and inaccurate (whether negligently or intentionally so, the court did not determine). The court's findings and conclusions for not approving the proposed disclosure statement are stated in the Civil Minutes, Dckt. 477, which include:

A. "For instance, the Disclosure Statement does not provide for income taxes. While YP Western Directory, LLC attempts to gloss over this by stating that the Plan payout does. The lack of this information in the Disclosure Statement is just an instance of where the Disclosure Statement fails to meet the adequate information burden."

B. "Furthermore, the Disclosure Statement fails to make clear certain assumptions that YP Western Directory, LLC take for granted. For instance, the Disclosure Statement does not make clear that the Debtors will no longer be in the wine business."

C. "Additionally, the Disclosure Statement fails to explicitly state the basis for the single secured claim for USFI as well as fails to explicitly show the calculation for the administrative expenses on how those amounts were calculated."

D. "Also, the court is also concerned with which projections the Disclosure Statement is relying on and whether those projections are actually feasible."

E. "The court is also not convinced that the Disclosure Statement does not need to account for USFI's potential 11 U.S.C. § 1111(b)(2) election. The conclusory statement by YP Western Directory, LLC that it does not need to account for the three potentially claims of USFI does not provide sufficient information as to why."

YP Counsel responded, filling an amended Chapter 11 small business plan and disclosure statement on January 23, 2015. Dckts. 490 and 491. Approval of this disclosure statement was denied. Civil Minutes, Dckt. 522. The court's findings were stated orally on the record. As noted in the Civil Minutes,

that the disclosure statement prepared by YP Counsel "suffers from significant defects, as stated by the court on the record." *Id.* Those defects "included [YP Counsel] misstating 'controlling' law and the amount of at least one secured claim which has been previously been [sic] determined by final order of this court." *Id.*

A year later in December 2015, Creditor YP again has its attorneys file an amended plan and amended disclosure statement. Dckts. 706 and 704. The court approved the "Creditor YP" amended disclosure statement. January 14, 2016 Civil Minutes, Dckt. 736. At that time the court addressed the impropriety of having the plan provide for Debtor's counsel being provided an administrative expense as part of the Plan. The court's findings and conclusions, Dckt. 736, including (emphasis added):

A. "The proposed Disclosure Statement states that Debtor's Counsel will be paid $40,000.00 as an administrative expense based on Ninth Circuit case law (no citation to the Ninth Circuit authorities in the Disclosure Statement)."

B. "The Disclosure Statement further provides that **[Creditor YP] intends to seek recovery of $15,000 for fees as a claim in this case**. It is not clear if this is being asserted as a general unsecured claim or an administrative expense for prosecuting a plan in this case."

C. "The **Disclosure Statement appears to make the inaccurate representation** that the Bankruptcy Code and appellate case law provide for a Debtor's attorney to be paid an administrative expense. The Disclosure Statement fails to state what appellate case law supports the proposition that Debtor's counsel is entitled to be paid an administrative expense."

The court addressed in the motion for compensation by counsel for the Debtor in Possession (who has subsequently served as the post-Chapter 11 Trustee appointment attorney for Debtor), making a full and final determination of all the fees and costs he could properly be allowed pursuant to 11 U.S.C. § 330. August 4, 2016 Civil Minutes, Motion for Compensation, Dckt. 830. The court's findings and amounts allowed include the following:

A. "First, [Debtor's counsel] seeks to be paid for 4.2 hours of time for working on a plan and disclosure statement – $1,029.00. The court denied approval of the disclosure statement and the plan never was advanced. Civil Minutes, Dckt. 258. The disclosure statement was missing basic information. While the plan and disclosure statement may have caused the court and Parties in Interest to consume (waste) time and money, it is not legal work for which value was rendered to the estate or Debtor in Possession."

B. The court allows fees of $21,756.00 for the period of November 30, 2012 through the November 13, 2013 appointment of the Chapter 11 Trustee. More than $20,000 in fees were allowed by the court, though counsel for the Debtor in Possession and the Debtor in Possession failed to make any positive effort to prosecute the case and the Debtor in Possession failed to fulfill their basic fiduciary obligations.

Though confirming the Chapter 11 Plan, Creditor YP had to make some amendments at the confirmation hearing to address extra-legal (as in not allowed under the Bankruptcy Code) provisions of the Plan that YP Counsel failed to properly address prior to confirmation. The court's findings of fact and conclusions of law are stated in the April 7, 2016 Civil Minutes, Dckt. 777. Some of the concerning issues addressed and findings of the court in the Civil Minutes, Dckt. 777, include the following (emphasis added):

A. "Though this case has had a long and tortured history, including the Debtor's failure to timely prosecute this as a small business case, most creditors have "gotten on board" and support the plan."

B. "Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass Through Certificates, Series 2007-QS2 ("DBTCA Tee"), acting through PHH Mortgage Corporation, opposes confirmation. Opposition, Dckt. 756."

C. "The Debtor, not YP Western Directory, LLC, respond to the Opposition. Response of Debtor, Dckt. 759."

This is yet another demonstration, as discussed in greater detail below, that Creditor YP, while nominally the plan proponent, was dancing to the tune of Debtor and Debtor's attorney. Creditor YP did not even respond to an objection to confirmation of "its" plan, but abdicated to let Debtor's attorney call the shots.

D. "**The Plan, as** presented by [Creditor YP] and **trumpeted by Debtor**, **provides** that the Class 1 secured claim **will not be paid any monies until at some later date when** the decision is made to sell the Debtor's residence. The **Debtor will continue to live in the residence, without any payment made to the Class 1 creditor. This might be one year or 100 years – YP Western Directory, LLC has advanced a plan which allows the Plan Administrator, the Debtor, to live in the residence as long as they want and then sell it at whatever date into the future.**"

This yet again demonstrates that Creditor YP, as a creditor, appears to be disconnected with the Plan, and allowing Debtor and Debtor's counsel to call the shots. No credible explanation was provided as to how YP Counsel, as the attorney for Creditor YP, would ever propose a plan that allowed Debtor to live in their home without ever having to pay the creditors with claims secured by the property.

E. "This proposed treatment for a secured claim is in stark contrast as to how YP Western Directory, LLC has provided for its own claim (or purportedly its own claim - with Proof of Claim No. 11 listing California Bell Directory, a California Corporation, as the creditor, with no transfer of the claim to YP Western Directory, LLC having been filed)."

Because the Debtor does not get to vote for confirmation of a plan, there appears to be little, if any, *bona fide* good faith reason for a creditor's plan to provide for a "never have to pay" a claim provision. Rather, it appears that Debtor has prepared and proposed a Plan that "bought off" Creditor YP by providing for its claim, with Creditor YP then standing as the sham plan proponent.

F. "Debtors offered no good argument for how these serious standing issues could have been miraculously resolved with the signing of a stipulation with the very entities that Debtors disputed had any standing. This **raises serious concerns whether the contentions concerning standing by Debtor were made in good faith or consistent with the certifications under Federal Rule of Bankruptcy Procedure 9011 by Debtors and Counsel for Debtors.**"

G. The court, being directed to the California Secretary of State website, discovered that YP Western Directories, LLC was not authorized to do business in California, its corporate status reported by the California Secretary of State as – "CANCELLED."

H. In addressing the above issue, the court stated:

> "Throughout this case, **[Creditor YP] has (mis-)represented that it is a creditor in this case**, purporting to be the successor of Pacific Bell Directory, a California Corporation**. Counsel for the purported party "YP Western Directory, LLC," upon reading the court's tentative ruling posted on April 6, 2016, appeared at the hearing on April 7, 2016, to report that YP Western Directory, LLC had not existed since December 31, 2014.** See Statement of Identity, Dckt. 771. At the hearing, **counsel for 'YP Western Directory, LLC' advised the court that other courts had been notified that YP Western Directory, LLC did not exist and had been merged through a series of entities, ending up with the latest incarnation being YP Advertising & Publishing**, LLC - but counsel had no explanation as to why no notice had been given in this case, notwithstanding counsel's knowledge of the termination of YP Western Directory, LLC."

While honest mistakes can occur, it is inconceivable that if Creditor YP was actually involved in this case, and not merely "renting" its name to Debtor to misrepresent the court that it was prosecuting a creditor's plan, at least one representative of Creditor YP would have told YP Counsel that the name being stated on all the pleadings was inaccurate. This was not just in the upper left-hand corner of the caption, but in the actual pleadings themselves. This further demonstrates that Creditor YP was not actively engaged in the prosecution of the Plan attributed to it.

I. "As discussed below, it appears that the identity of the actual creditor may not have been forefront on counsel for YP Western Directory, LLC - through - YP Advertising & Publishing, LLC because **the conduct of the parties indicates that it was actual acting at the direction of the Debtors – or as the court phrased it at the hearing, 'as the Debtors' dupe.'**"

J. "The conduct of YP Western Directory, LLC - through - YP Advertising & Publishing, LLC and its counsel, and the Debtors and their counsel cause the court great concern. **In light of all the lawyering missteps, improper conduct, and just plain**

mis-lawyering, it appears that the **conduct of the various parties and counsel may well be intentional,** not inadvertent as contended by the attorneys for these parties."

K. "As stated above, the original Class 1 Plan treatment was patently unconfirmable – absent the consent of the creditor. As discussed by the court at the hearing, it is quite curious that if YP Western Directory, LLC - through - YP Advertising & Publishing, LLC was actually the plan proponent, it makes no sense that the Class 1 treatment for which the collateral was the Debtors' residence would be that the creditor gets paid whenever the Debtors, acting as Plan Administrators, decide (now or 100 years from now), while all the other creditor provisions are very specific and set distinct deadlines. **This causes the court it infer that it was actually the Debtors calling the shots, with YP Western Directory, LLC - through - YP Advertising & Publishing, LLC and its counsel serving as the undisclosed proxy/agent/dupe for Debtors.**"

L. "**When directly asked** at the hearing for **counsel for YP Western Directory, LLC** - through - YP Advertising & Publishing, LLC and counsel for Debtors to **explain how the proposed plan treatment was consistent with the Bankruptcy Code**, neither could provide an answer. **All they could say was** that since they now had a stipulation, **it shouldn't matter**."

M. "A review of the files in this case shows a tortured history, one in which the conduct of the various parties is not consistent with the duties and obligations under the Bankruptcy Code."

N. Because of a stipulation agreed to by Debtor (with YP Counsel exhibiting a "yeah, me too" level of lawyering), the court approved the amended plan. Notwithstanding the misconduct, the confirmed plan provided the innocent creditors with a better outcome than converting the case to one under Chapter 7. The innocent creditors were not to be punished due to the conduct on Debtor, Debtor's counsel, Creditor YP, and YP Counsel, and the inaction of the Trustee and Trustee's counsel.

O. The court, again, had to expressly address the misstatement of administrative expenses under the plan, requiring that Debtor, and Creditor YP as the nominal plan proponent, to properly provide for such expenses as permitted by the Bankruptcy Code.

> "The court also requires that the order confirming the plan clearly state that the 'Administrative Expenses' for which court approval is required includes all administrative expenses, not merely those under the 'Administrative Expense' heading. The Plan Proponent included the respective attorneys for the Trustee and Debtors under the "Administrative Expense" heading, but then had separate headings for the Chapter 11 Trustee's Fees and the Plan Proponent's fees. **This inclusion in the order is necessary in light of the various parties and attorneys "creative" reading of the Class 1 treatment and the possibility that they might well argue, 'well, the Trustee's fees and Plan Proponent's fees are under a different hearing, so by**

> **confirming the Plan judge you have already approved those – irrespective of whether they are reasonable or the requesting party is entitled to such fees.**'"

The confirmed Chapter 11 Plan expressly provides, as was also expressly stated in the approved disclosure statement that creditors and the court relied on in voting for and confirming the plan, that the maximum of administrative expenses that would be requested by Debtor's counsel and for Creditor YP's counsel were:

> "**Administrative Expenses:**
>
> Administrative expenses will be paid from cash on hand on the Effective Date of the Plan unless the claimant has agreed to be paid later or the Court has not yet approved the fees.
>
> Attorney for the Debtors: $40,000.00
>
> First Attorney for Chapter 11 Trustee (not expected to file a claim): $15,000.00
>
> Successor Attorney for Chapter 11 Trustee: $40,000.00
>
> Accountant for Chapter 11 Trustee:
> $6,288.50 was held back and
> Accountant is estimating an additional $25,000.00 $31,288.00
> . . .
>
> **Chapter 11 Trustee's Fees:**
> Trustee's Fees $15,000.00
>
> **Plan Proponent Fees:**
> Plan Proponent Fees $15,000.00
> . . . ."

Confirmed Plan, Part IV, page 10 of Plan, attached to Order Confirming Plan; Dckt. 781.

In the approved disclosure statement, Creditor YP (to the extent that it was actually involved) expressly told creditors to rely on the information in the disclosure statement and plan, stating:

> "Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights. If there are any inconsistencies between the Plan and this Disclosure Statement, the Plan provisions will govern."

Disclosure Statement, p.4:12–15; Dckt. 739. The Creditor YP disclosure statement goes further to state:

> "No representation concerning the debtors and/or the business of the debtors, other than those contained herein, have been authorized by the Plan Proponent and should not be relied upon by creditors analyzing the Plan."

Id., p. 4:21–23. Finally, the additional statement as to administrative expenses in the disclosure statement is:

> "a.) Administrative Expenses
>
> Administrative expenses are costs or expenses of administering the Debtors' Chapter 11 case which are allowed under § 507 (a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtors in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. . .All administrative claims are subject to court approval, nothing herein constitutes or shall be deemed constituting an agreement regarding administrative claims."

Id., p. 18:19-15. After the above text is the chart disclosing to creditors the "estimated administrative expenses." While that chart lists $40,000 for Debtor's attorney, $15,000 for the original attorney for the Chapter 11 Trustee, $40,000 for the successor attorney for the Chapter 11 Trustee, and $31,288.50 for the accountant for the Chapter 11 Trustee, no possible administrative expense for Creditor YP is disclosed. *Id.*, p. 19:27. However, in a subsequent paragraph the disclosure statement states "Plan Proponent estimates filling a **claim** for fees in the sum of $15,000.00." *Id.*, p. 20:12. The disclosure statement uses the word "claim," which may indicate that it is merely part of Creditor YP's unsecured claim and not an "administrative expense."

DYSFUNCTIONAL CONDUCT OF PARTIES

This bankruptcy case stands out as one in which the parties and their attorney did not comport themselves in the manner one expects in court, whether state or federal. The court's findings and conclusions stated in the civil minutes from various hearings and status conferences demonstrates the dysfunction, and waste of legal time and money, by the parties. These include the following:

I. September 26, 2013 Civil Minutes, Motion to Convert or Dismiss Case Filed by U.S. Trustee, Dckt. 254 (emphasis added).

A. "The U.S. Trustee and creditors are correct in asserting that **the Monthly Operating Reports** filed in this case are so inconsistent and inadequate that they **expose the inability of the Debtors in Possession to fulfill their fiduciary duties**."

B. "The court in independently reviewing the Monthly Operating Reports is struck by inconsistencies between the reported income, reported expenses, and bank account balances."

C. "The court determines that the appointment of a Chapter 11 Trustee is the preferred course. Several creditors expressed a desire that further effort be made to confirm a plan. It appears that the Debtor's business and assets are capable of generating a significant cash flow, which may be able to fund a plan."

D. "It is clear that the **Debtors are not capable of proceeding in this case** without someone else in control of the assets of the estate."

II. November 25, 2014 Civil Minutes, Motion to Compel Filed By Former Counsel For Debtors, Dckt. 453 [emphasis added].

A. "The court has been presented with an emergency motion for an order compelling the attendance of the person most knowledgeable at [Creditor YP], the creditor proponent of the proposed Chapter 11 Plan in this case and Sheryl D. Noel, its attorney, to appear for Depositions."

B. "Though they are not the subject of the discovery sought concerning [Creditor YP's] creditor plan, the **Debtors have rushed in with a response on behalf of [Creditor YP]**. Dckt. 445. Debtors state that in their list of creditors are four attorneys who have previously represented the Debtors. The Debtors note that only the attorney who represents [Creditor YP] has not represented the Debtors. The Debtors do not point out the significance of [Creditor YP's] attorney not having represented the Debtors and not being a creditor of the Debtors."

C. "Though **Debtors argue that Ms. Noel knows nothing about the information in the disclosure statement**, they then assert that the disclosure statement was prepared jointly by Debtors counsel and Ms. Noel. In light of the requirements of Federal Rule of Bankruptcy Procedure 9011, since Ms. Noel participated in the preparing of the disclosure statement, then she has specific obligations and duties relating to the information stated therein."

D. "Finally, Debtors, on behalf of [Creditor YP], request that the court deny the Motion. **Debtors provide no basis for having standing to defend [Creditor YP]** from Mr. Macdonald's attempts to conduct discovery of the plan proponent. The Response and seeking to defend [Creditor YP] appears to be **pregnant with the implication that the Debtors are controlling, or having [Creditor YP] act merely as the Debtors agent or proxy**, in proposing the Chapter 11 plan now before the court."

The court notes that as shown by the pleadings and rulings in this case, at many times it appears that Debtor's counsel was the one actually doing the work for Creditor YP, with Creditor YP merely providing the cover of its name and YP Counsel named as the "sham party."

III. March 26, 2015 Civil Minutes, Objection to Claim, Dckt. 551 (emphasis added).

A. "This 'small business' Chapter 11 case was filed on November 30, 2012. Now, **twenty-nine months later neither debtor, Chapter 11 Trustee, or creditors have been able to obtain approval of a disclosure statement or confirm a plan**. Rather than converting the case to one under Chapter 7 or dismissing it in 2013 as requested by the U.S. Trustee (Motion, Dckt. 198), the court ordered the appointment of a Chapter 11 trustee."

B. "Determining that relief [appointment of a trustee] was proper, the court made extensive findings concerning the conduct of the then Debtors in Possession. Civil Minutes, Dckt. 254."

C. "The Chapter 11 Trustee was appointed on November 14, **2013. In the seventeenth months since his [the Chapter 11 Trustee's] appointment he has not proposed a plan.**"

D. "The only plans proposed has been those of either the Debtors or [Creditor YP] (as a creditor) in conjunction with the Debtors. (While Debtors' counsel's name is not on the [Creditor YP] pleadings, **it is clear that he and the Debtors are working closely with and directing much of what is being done by this creditor.)**"

IV. April 16, 2015 Civil Minutes, Motion for Relief From Stay, Dckt. 580 (emphasis added).

A. "This case presents the court with an interesting dilemma. The court has valued Movant's secured claim at $650,000.00 in this Chapter 11 case pursuant to 11 U.S.C. § 506(a)."

B. "However, **Debtor was unable to prosecute a plan in this small business case**."

C. "**Creditors in this case have been unable to prosecute a plan.**"

D. "The **Chapter 11 Trustee (order appointing filed on November 14, 2013, Dckt. 274) has been unable to prosecute a plan in this case**."

E. "If true, it further appears that the Debtor in Possession and Trustee have allowed Movant and Movant's predecessor to take property of the estate, rents from the property, without court order or authorization."

F. Grounds for relief from the stay exist, "the **Debtors, other Creditors, and the Chapter 11 Trustee have failed to prosecute an effective plan of reorganization in this case**...."

V. September 3, 2016 Civil Minutes, Motion for Authorization to Turn Over Monies, Dckt. 677 (emphasis added).

A. "The court cannot, and will not, issue orders merely because it is instructed to by a trustee, debtor in possession, debtor, or attorney. **Here, no basis was shown for the court issuing the Trustee a comfort order** saying to pay the rent monies to the creditor and pay the expenses incurred in the estate operating the property."

B. "The court's review of the July 2015 Monthly Operating Report discloses that the rents being generated by the property are only $4,758 a month. Dckt. 663, pg. 4. However, **the financial information provided under penalty of perjury of the Trustee is questionable**, as the Statement of Cash Receipts and Disbursements purports to state that the Trustee had no monthly disbursements for any expenses relating to this rental property and the tenants. But on page 6 of the July 2015 Monthly Operating Report the Trustee states that he had expenses of $851 for repairs, $1,999 for utilities, $540 for landscaping, all of which appear to be (at least in part) expenses relating to the rental of the property.

IMPROPER REQUEST TO DIVERT NON-AUTHORIZED ADMINISTRATIVE EXPENSE FROM DEBTOR'S COUNSEL TO CLAIMANT AND YP COUNSEL

In the present Motion, Creditor YP ignores the confirmed plan that "it" was the proponent of and confirmed in this case. That Plan expressly states, as does the disclosure statement, that the "reasonable and necessary" fees which Creditor YP will seek to have allowed as an administrative expense are $15,000.00, to the extent that such would be authorized by the court. Somehow, undisclosed in the Motion, those fees and costs ballooned to $47,085.39—a 300% increase.

When the U.S. Trustee called foul (Dckt. 862), stating that Creditor YP and YP Counsel were now acting in violation of the disclosures made in the Creditor YP disclosure statement and the Creditor YP plan, both of which are purported to have been written by YP Counsel, the response was not by Creditor YP, and YP Counsel was not to acknowledge an error and that their attempt was in violation of their own representations and plan. Instead, Creditor YP and YP Counsel argued that the attorneys' fees for Debtor's counsel (which were clearly not allowable as an administrative expense) are attorneys's moneys that can just be paid to Creditor YP.

> "Plan Proponent is only seeking the excess administrative fees that were not awarded to Mark Hannon, the Debtors' attorney, and fees not requested by the Trustee's first attorney. There is no adverse effect to any creditor or the Debtors because these additional fees requested are only being re-allocated to Plan Proponent."

Response, p. 2:9–12.

The further contention by Creditor YP and YP Counsel that the $15,000.00 was a discounted amount because Debtor's counsel was going to be paid $40,000.00 is not credible. Everyone in the courtroom knew, as a matter of law, Debtor's counsel could not be allowed an administrative expense for

the post-Debtor in Possession work. All of the creditors knew it as of voting on the Plan. It was a phantom, false, impermissible administrative expense that had a known cost of $0.00.

In the Response, Creditor YP and YP Counsel go further, admitting that some, if not all, of the fees relate to services that were made to benefit Debtor. "Here, all work performed was directly for the benefit of the Debtors and creditors. It is undisputed, had this Plan not been confirmed, there would have been virtually no funds for unsecured creditors and the Debtors would have been forced to liquidate and lose most, if not all, of their real property." *Id.*, p. 2:19–22.

Any feigned ignorance of the law by YP Counsel is not credible. The U.S. Trustee filed an objection to the disclosure statement in which it cited Creditor YP and YP Counsel to the Supreme Court ruling in *Lamie v. United States Trustee*, 540 U.S. 526 (2004). January 14, 2016 Civil Minutes, Dckt. 736; December 30, 2015 comments by U.S. Trustee, Dckt. 722. Even a cursory reading of the Supreme Court ruling discloses:

> "Adhering to conventional doctrines of statutory interpretation, we hold that § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327."

Lamie v. United States Trustee, 540 U.S. at 537–38.

A review of COLLIER ON BANKRUPTCY, Sixteenth Ed., ¶ 330.02[2] and [3] (emphasis added) discloses on this issue of what attorneys may be allowed compensation as an administrative expense:

> [2] Professional Persons
>
> "[a] Requirement of Employment as a Condition of Receiving Compensation
>
> **Compensation awards for attorneys**, accountants and other professional persons are not limited by the maximum compensation standards applicable to trustee compensation. The compensation for services and reimbursement of expenses of professionals are determined under the standard provided in section 330. **Only** those professionals **whose employment is authorized by the court pursuant to section 327 or 1103, or who represent chapter 12 or chapter 13 debtors, are entitled to compensation under section 330.** For example, in *In re Grabill Corp.*, the Court of Appeals for the Seventh Circuit ruled that a law firm that was denied permission to represent the debtor under section 327 was not entitled to compensation for assisting the debtor's new attorneys. The bankruptcy court had denied the law firm's application for employment under section 327(a) due to a conflict of interest: the law firm had concurrently represented the debtor and the debtor's owner at a time when the bankruptcy filing was imminent. After the law firm's application had been denied, it continued to bill time and expenses to the debtor for familiarizing the debtor's new counsel with the case, and sought compensation for this assistance. The Seventh Circuit denied compensation based on a strict reading of the Bankruptcy Code, concluding that employment under section 327(a) is a condition precedent to

> compensation under section 330. 35 Similarly, in *In re Trust America Services Corp.*, the bankruptcy court denied an application for compensation for services rendered and expenses incurred by accountants to the committee of unsecured creditors due to an actual conflict of interest arising out of dual representation of the committee and one of the debtor's largest unsecured creditors."
> . . .
> [3] Compensation of Attorney for Debtor
>
> [a] Compensation of Debtor's Attorney from Estate Limited by Section 330
>
> The attorney for the debtor may be compensated from the estate only as provided in section 330. In *Lamie v. United States Trustee*, the Supreme Court held that, although it might have been a "scrivener's error," **Congress deleted debtors' attorneys from eligibility for compensation from the bankruptcy estate except as specifically provided elsewhere in section 330.** Section 330(a)(4) specifically provides for compensation of debtors' attorneys in chapter 12 and chapter 13 cases from the estate, but it makes **no similar provision for debtors' attorneys in chapter 7 or in chapter 11 cases where the debtor is not a debtor in possession**. These latter attorneys can be compensated from the estate only if they are appointed to represent the trustee, which would normally be with respect to a discrete matter for which they were particularly qualified. . .

If that was not enough, the court addressed, and dismissed Debtor's counsel's arguments that the Supreme Court did not mean what it said that a debtor's attorney could not be allowed an administrative expense for attorneys' fees for representing the debtor.

> "Counsel for Debtor has filed his Memorandum of Points and Authorities citing to bankruptcy case law (not the Bankruptcy Code) for the proposition that a debtor's attorney may be paid attorneys' fees notwithstanding the appointment of a trustee. Shepardizing the cases cited in the Points and Authorities led the court to *Lamie v. United States Trustee*, 540 U.S. 526, 538–39 which is contrary to the Debtor's citations and lists the circumstances in which a debtor's counsel may be compensated from the estate. . . ."

January 14, 2016 Civil Minutes, Disclosure Statement Hearing; Dckt. 736.

It appears that Creditor YP and YP Counsel are attempting to circumvent the clear, unambiguous law enacted by Congress and obtain payment for Debtor's counsel's attorneys' fees. Having failed to sneak it by the court in the plan, it may be that Creditor YP's and YP Counsel's request for $45,000 in fees are merely part of a scheme to "kick-back" $30,000 of the monies to Debtor's counsel.

Further Creditor YP and YP Counsel are acting to breach the "contract" created by the confirmation of the "Creditor YP" Plan.

> "A reorganization plan resembles a consent decree and therefore, should be construed basically as a contract. *See The Official Creditors Committee of Stratford of Texas, Inc. v. Stratford of Texas, Inc. (In re Stratford of Texas, Inc.)*, 635 F.2d 365, 368–69 (5th Cir. Unit A Jan. 1981); *see also Rufo v. Inmates of Suffolk County Jail*, 116 L. Ed. 2d 867, 112 S. Ct. 748, 757 (1992) (a consent decree has elements of both a judgment and a contract)."

Hillis Motors v. Hawaii Automobile Dealers Association (In re Hillis Motors), 997 F.2d 581,588 (9th Cir. 1993). "Once a reorganization plan is confirmed, it is a new contract among the parties, who are bound by it." *Gomes v. Roman Catholic Church of the Diocese of Tucson (In re Roman Catholic Church of the Diocese of Tucson)*, 2008 Bankr. LEXIS 4737 ,at *12 (B.A.P. 9th Cir. November 28, 2008).

In the "contract," Creditor YP and YP Counsel affirmatively state, that Creditor YP's administrative expense recovery will be $15,000, to the extent it is allowed by the court. Creditor YP and YP Counsel now seek to breach that contract by contending that because someone else does not have an administrative expense (which everyone knew was an invalid administrative expense, for which the actual expense was $0.00), Creditor YP gets to take the money. FN.1.

FN.1. The shifting of positions and now trying to invert a $15,000.00 expense to a $45,000.00 expense also raises the specter of judicial estoppel. The equitable doctrine of judicial estoppel encompasses a variety of different situations that revolve around the concern for preserving the integrity of the judicial process. *In re Associated Vintage Group, Inc.*, 283 B.R. 283 B.R. 549, 565. (B.A.P. 9th Cir. 2002). The doctrine extends to incompatible statements and positions in different cases. *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597 (9th Cir. 1996).

Independent of unfair advantage from inconsistent positions, judicial estoppel may be imposed "[o]ut of 'general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings;' or to 'protect against a litigant playing fast and loose with the courts.'" *Hamilton*, 270 F.3d 778, 782 (9th Cir. 2001), and *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). Moreover, it may be invoked "to protect the integrity of the bankruptcy process." *Hamilton*, 270 F.3d 778 at 785.

Here, with full knowledge that no legal basis existed for there being a $40,000.00 administrative expense for Debtor's counsel, Creditor YP continued to communicate to the court and obtain confirmation of a plan which provided for Creditor YP to have a $15,000.00 (to the extent permitted) administrative expenses. Even though Creditor YP was well aware of the need for court approval, it failed to make that correction to the Plan, necessitating it having to be done at the confirmation hearing for confirmation of the Plan.

To jump from dollar amount to dollar amount, confirm a plan with a $15,000.00 administrative expense amount, and then flip-flop to more then treble that amount after the plan is confirmed is not consistent with maintaining the integrity of the judicial process. The contention that because, after confirmation of the Plan and the therefore known requirement of court approval of administrative expenses was inserted into the plan rather than the apparent "granting" of the administrative expense by the plan itself, creditors should not care that $30,000.00 of a known worthless administrative expense is diverted to Creditor YP is not credible and sounds in "fast and loose" play.

SUBSTANTIAL CONTRIBUTION AND VALUE TO THE CHAPTER 11 CASE

The amount of an administrative expense for the attorneys' fees of a creditor must be for a "substantial contribution" to the Chapter 11 case and must be reasonable. Even when 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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

While there has been some benefit to the case, there has not been $45,085.39 "substantial contribution" by Creditor YP or YP Counsel. The outrageousness of this increased amount is highlighted by what Creditor YP and YP Counsel argue are the total "reasonable fees" by counsel since the appointment of the Chapter 11 Trustee. Piled on top of the current increased request of $45,085.39 of Creditor YP are the $40,000.00 of fees billed by Debtor's counsel stated by Creditor YP and the additional fees for counsel for the Trustee (no motion to approve fees or order allowing fees have been filed) in the amount of $40,000.00 estimated in the confirmed Chapter 11 Plan. In addition, YP Counsel asserts that it has performed an additional $19,000.00 of legal research for which Creditor YP is not seeking reimbursement as part of the requested administrative expense.

Taken at face value, Creditor YP and YP Counsel assert that there has been $125,000 (ignoring the additional $19,000.00 of legal fees purported have been done by YP Counsel but for which Creditor YP does not attempt to include in its request for an administrative expense) of reasonable and necessary legal fees and expenses since the appointment of the Chapter 11 Trustee. (That does not include the fees for the Trustee's original counsel, which are estimated in the Plan to be an additional $15,000.00, but for which no motion has been filed and which pre-date any attempt to proceed with a plan in this case.) It is clear that

there have not been $125,000 of reasonable, necessary, and proper legal work in this case getting the plan to confirmation.

If, as Creditor YP asserts (admits as stated in the Creditor YP's disclosure statement and confirmed plan) there was $40,000.00 of reasonable and necessary time spent by Debtor's counsel in making a substantial contribution to this case, then Creditor YP's substantial contribution is merely the icing on the cake. But it is clear from the quality of the work done and the obvious legal defects in the various plans floated in this case, there has not been $40,000.00 reasonable and necessary work done by Debtor's counsel that was a substantial contribution to this case.

As for YP Counsel, from the evidence presented, it has served as the "second chair" to Debtor's counsel, acting at his direction and on his commands. The plans filed clearly were drafted by Debtor's counsel, as demonstrated by the "Debtor never has to pay on the claim secured by Debtor's home until Debtor chooses in the future" provision. As discussed above, when the "Creditor YP's" plan was attacked, YP Counsel did not respond, but left that to Debtor's counsel (the "first chair attorney" directing the show). This even included objecting to the deposition of YP Counsel, something that Creditor YP did not act on. Again, this demonstrated that YP Counsel was the "associate counsel" working on this matter at the direction of Debtor's counsel.

Creditor YP has provided billing records of YP Counsel as Exhibits A-1 through A-5. Dckt. 846. Beginning with Exhibits A-1, for the hours relating to the disclosure statement and plan, the time spent during the period November 2014 through December 2015 were of little value to the case and did not provide any substantial benefit. This was a period of non-productive cycling by Debtor and Creditor YP, with blatantly defective disclosure statements and defective plans. Much of the billings are for disclosure statements that could not be approved and for which Creditor YP did not prevail in its efforts (but cause significant cost and expense to the other creditors). Even for the confirmed plan , Creditor YP was required to make amendments at the confirmation hearing to correct obvious defects (which grossly favored the Debtor) that rendered the plan non-confirmable.

In looking at the billings for just drafting the disclosure statement and plan, YP Counsel includes $12,275.00 in fees on Exhibit A-1. Much of this is for plans that could not be confirmed. $12,275.00 for the plan in this case is unreasonable and not warranted. This does not include the extensive time in communications (phone and e-mail) with Debtor's counsel and counsel for the Trustee. While some communication is necessary, and very beneficial, the level of communication does not indicate time well spent in providing a substantial contribution to the case.

Creditor YP seeks to recover $4,362.50 relating to the litigation concerning Ian MacDonald, a creditor in this case. That claim, in the amount of $8,135.00 is provided for as a Class 8 secured claim and for $16,270.00 as a Class 10.1 unsecured claim. Proof of Claim No. 21 was filed by Ian MacDonald on March 28, 2013, as a $16,270.01 general unsecured claim. Proof of Claim No. 21. The $4,362.50 of "substantial benefit" work is purported to have been done after November 3, 2014. Exhibit A-2, Dckt. 846. The Motion does not identify what substantial benefit was provided to the case by the work done by YP Counsel.

Creditor YP seeks to recover an additional $5,362.50 for the work of YP Counsel addressing the secured claim of "USFI & G Street." In the confirmed plan, USFI's $400,000 secured claim is provided for with $3,000 per month payments, with interest at 6% per annum for 48 months, with the entire obligation coming due in full at the end of the 48 months.

For the G Street Investments claims, its $750,000 secured claim is provided for in the confirmed plan with $4,250 per month payments, with the balance to be paid in full on August 31, 2018. This claim was filed by LSC Reality California, LLC, and subsequently assigned to G Street Investors, in the amount o f $767,864.75, of which $650,000 was claimed as secured and $117,864.75 as unsecured. Proof of Claim No. 13. The provision for payment of $750,000 was based on G Street Investors making an 11 U.S.C. § 1111(b) election to have its claim, as of the commencement of the bankruptcy case, treated as a fully secured claim.

Little, if any, explanation is provided as to how Creditor YP provided a substantial benefit to the case by YP Counsel's billings, especially in light of the $80,000.00 of legal fees for work done by Debtor's counsel and Trustee's counsel. It appears that this work was more of the "second chair" work done, duplicating what the Debtor's counsel and Trustee's counsel were doing.

The court was reminded of the nature and quality of the legal work in connection with these claims while reviewing the court's file for the present Motion. On April 2, 2015, Debtor's counsel filed an Objection to the two claims of G Street Investments, LLC. Objection, Dckt. 556. In the period February 2015 through May 2015, YP Counsel billed extensively for working on this Objection, including drafting revisions to it. The sole basis for the Objection was stated by Debtor's counsel (and YP Counsel through its collaboration that Creditor YP seeks as part of the requested administrative expense) as:

> "Debtors move this Court under its equitable powers to limit the claim of G Street Investments, LLC, to a secured sum of $495,000.00, to order that no unsecured claim exists, and that the secured sum be paid at an interest rate of 5.250% interest, amortized over 30 years, which is the sum of $3,353.00 monthly."

Objection, Dckt. 556. In substance, Debtor (and Creditor YP through its collaboration) argue that Debtor should not pay and G Street Investments, LLC should not be paid what is legally due on the note because when the note was negotiated by the original creditor, such negotiation worked a forgiveness of debt to Debtor. No legal basis under any applicable law was cited by Debtor (Creditor YP collaborating on the Objection).

The court, in ruling on the Objection after an opposed hearing by G Street Investments, LLC, held that such a contention not only violated the recent Supreme Court ruling in *Law v. Siegel*, 571 U.S. ___, 134 S. Ct. 1188 (2014), but well established law in the Ninth Circuit in *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations)*, 502 F.3d 1086 (9th Cir. 2007), which has made it abundantly clear that the court's equitable powers under 11 U.S.C. § 105 is not a carte blanche for the court to ignore specific code sections and rules based on the esoteric idea of "equity."

As with much of the legal work done after the appointment of the Trustee, there was little benefit to anyone from such efforts (and expense).

Another curious coincidence is that Debtor objected to the claim on Creditor YP, asserting that no such obligation was owed. Debtor and Debtor's counsel filed an objection, asserting that no evidence was attached to Creditor YP's proof of claim and that the claim was time-barred. Objection, Dckt. 91. Presumably, neither the Debtor nor Debtor's counsel would have filed such an objection unless they both had a good faith belief that such objection was proper on both the facts and law in light of the certifications by both pursuant to Federal Rule of Bankruptcy Procedure 9011. This was filed on March 7, 2013.

The two debtors testified under penalty of perjury that the last payment they made on the debt owed to creditor was in 2008, with the 2013 bankruptcy case being filed more than four years (the statute of limitations for a debt based on a written contract) after that payment. Declaration, Dckt. 93. Debtor further asserted that the $150,000.00 claim should be disallowed because the state court action which had been commenced by Creditor YP had been dismissed for lack of prosecution. However, on September 12, 2013, after the hearing had been continued, Debtor withdrew the objection to the $150,000.00 claim. Dckt. 220. This coincided with the hearing set for September 26, 2013, for the conversion or dismissal of this case, and creates the appearance that notwithstanding a bona fide basis for objecting to the claim, Debtor recognized it needed an ally to fight the conversion or dismissal of the case and could acquire one for a $150,000.00 claim.

Fees Allowed for Substantial Contribution Provided

The court believes that it could deny the motion in its entirety. Creditor YP, in less than good faith, seeks to breach the plan and disclosure statement so to skim $30,000.00 of administrative expenses that were included in the $40,000.00 estimate in the plan for Debtor's counsel (which were obviously not permitted and everyone knew represented an administrative expense value of $0.00 when creditors voted on the plan) into its own pocket to receive well in excess of the $15,000.00 (to the extent allowed by the court) that Creditor YP put in "its" own plan and disclosure statement that it presented to the court and creditors, which the court has confirmed.

Based on the conduct of the parties, the court is convinced and concludes that much of what YP Counsel did was merely at the direction and bidding of Debtor's counsel. Much of it represents duplicative billing to the $40,000.00 of Debtor's attorneys' fees that Creditor YP believed to be proper and valid (stating that amount in the plan and disclosure statement). Much of what Creditor YP and YP Counsel seek to recover is for advocating for Debtor, not substantially contributing to the case. One of the most striking examples of this is attempting to prosecute a plan provision that allowed Debtor to stay in their house and never pay the creditor holding the secured claim, unless and until at some time in the future Debtor or some successor to Debtor should decide to voluntarily pay. Another is actively working with Debtor to object to a claim based on a contention that the obligation due on a negotiable instrument is reduced when that negotiable instrument is negotiated and sold to a third-party for less than what is owed by Debtor on the note at that time. A third glaring example of promoting for the Debtor is maintaining a plan provision providing for an administrative expense for Debtor's counsel after having been provided the Supreme Court and lower court authorities that such an expense was not permitted under the Bankruptcy Code.

The court is further convinced, and concludes, that much of what is purported to have been done by Creditor YP and YP Counsel is really work done by Debtor's counsel. Reviewing the plan and disclosure statement, Creditor YP's name appears on it merely because Debtor had blown (due to failing to fulfill the

fiduciary duties of a Debtor in Possession) the ability to run this case. Additionally, Debtor having designated this as a small business case had also blown Debtor's ability to propose a plan.

While the court could deny any administrative expense for Creditor YP, the court is also convinced that there has been a benefit for creditors and some contribution, which for purposes of this Motion the court will consider substantial, provided by Creditor YP, even if acting as the dupe for Debtor. If Creditor YP had not been involved, the court is convinced that none of the other creditors or the Chapter 11 Trustee were capable of putting together and getting a plan confirmed. While Creditor YP's role may merely have been a beard to allow Debtor's counsel to run the show, there is a confirmed plan in this case.

As to the amount, Creditor YP has stated and obtained votes of creditors and the confirmation by the court stating that the fees for this administrative expense were $15,000.00 (to the extent permitted by the court). Creditor YP admits that the Debtor's counsel and Trustee have done $80,000.00 of legal work in this case. Thus, Creditor YP's efforts could likely be less than the $15,000.00, as there has not been $95,000.00 of good, solid, legal work in this case.

However, if the court were to reduce the amount below the $15,000.00 provided in the plan, such would just go to benefit Debtor and Debtor's counsel for their complicity in the dysfunctional prosecution of this case and fiction of Creditor YP proposing a plan.

Therefore, the court concludes that the reasonable value of the legal services provided by YP Counsel in this case that provided a substantial contribution to the case, as opposed to just Creditor YP's interests (such as getting the Debtor to allow Creditor YP a $150,000.00 claim instead of prosecuting the claims objection) is $15,000.00. From the work done, the $250.00 billing rate is not reasonable. The admission by Creditor YP that the $19,000+ of legal research billings did not substantially contribute to the case is consistent with the court's determination as to the legal services provided by YP Counsel. It appears that much of this was the "law school training" of counsel on bankruptcy. Given the level of legal representation and the "second chair" nature of the services, a $175.00 hourly rate would not be inappropriate. At that rate, $15,000.00 allows Creditor YP to recover 156 hours of billable time of substantial value to the estate. (Again, the court notes that the value of YP Counsel services may be greater to Creditor YP in light of having a $150,000 claim in this case that Debtor wants to pay, but that is not substantial contribution value to the case.)

Costs and Expenses

Creditor YP also seeks the allowance and recovery of costs and expenses in the amount of $1,280.39 pursuant to this Motion.

The costs requested in this Motion are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$315.47

Photocopies		$642.60
Mileage		$103.12
Court Calls		$219.20
Total Costs Requested in Application		$1,280.39

The court allows all but the $219.20 court call expense. These items are out of pocket costs for Creditor YP and YP Counsel in providing the representation. The court does not allow the court call expense in that it represents one of the "values" provided by the lawyer within the hourly rate. The use of Court Call, and this court not requiring in-court appearances for every hearing, allows an attorney to greatly expand the geographic area in which he or she can economically appear. In addition, while waiting on Court Call for a matter to be called, the attorney can be sitting at his or her desk working on another matter. Given the nature of reasonable billing, the use of Court Call may raise the attorneys' effective hourly rate 150% to 200%. As opposed to an "expense," the use of Court Call is effectively (when properly used) a tool to make the practice of law more efficient, more competitive, and more profitable.

The court allows costs and expenses in the amount of $1,061.19.

The court allows YP Advertising & Publishing, LLC an administrative expense pursuant to 11 U.S.C. § 503(b)(4) for its legal costs and expenses, which provided a substantial contribution to the case as provided in 11 U.S.C. § 503(b)(3)(D) of $16,061.19. The Plan Administrator under the confirmed Chapter 11 Plan shall pay these expenses as provided in that Plan.

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 an Administrative Expense (improperly captioned as Application for Approval of Compensation) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that YP Advertising & Publishing, LLC is allowed an administrative expense in the amount of $16,061.19 pursuant to 11 U.S.C. § 503(b)(4) for its legal costs and expenses, which provided a substantial contribution to the case as provided in 11 U.S.C. § 503(b)(3)(D).
>
> **IT IS FURTHER ORDERED** that the Plan Administrator under the confirmed Chapter 11 Plan (Dckt. 781) is authorized to pay this allowed administrative expense as provided in the confirmed Chapter 11 Plan.

No other or further relief is granted, and all amounts in excess of $16,061.19 are disallowed as an administrative expense.

10.	**15-90753-E-7** **ICE-1**	**RAYMOND GUERRERO** **Thomas Hogan**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RAYMOND GUERRERO** **9-19-16 [40]**

Final Ruling: No appearance at the October 20, 2016 hearing is required.

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

Correct 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 19, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Approve 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 (14) 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 Approval of Compromise is granted.

Irma Edmonds, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Raymond Guerrero ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to a preferential payment in the amount of $5,000.00 made by Settlor to relative, Judy Guerrero.

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 is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 43):

A. Settlor shall make one payment of $5,000.00 to Movant.

B. By accepting payment, Movant agrees to accept the payment in full satisfaction of recovering Settlor's preferential payment.

In her declaration, Dckt. 42, the Trustee states that she has received the payment of the $5,000.00 from Settlor. (This should also be clearly stated in the Motion as it is one of the "grounds" to be stated with particularity, as well as in the declaration for the supporting evidence. Such pleading in the motion will ensure that the court notes such and does not miss it when digging through the declaration, exhibits, file, and other documents. With such information, the court can issue a final ruling on the motion, saving the trustee, attorney, and other parties in interest the time of having to come/call in just to affirm that for the court.)

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 Construction)*, 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 Committee for Independent Stockholders 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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met. The proposed settlement permits the Movant to immediately recover the $5,000.00 made as a preferential payment.

Probability of Success

Movant believes that the likelihood of success high, but it is obviated by the settlement reached between the parties. The settlement provides exactly the amount that Movant contends was owing at the time of filing the bankruptcy case.

Difficulties in Collection

Movant asserts that there is no difficulty in collection because the $5,000.00 has already been paid promptly.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs because of mixed questions of law and fact.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the compromise provides secures the exact amount that Movant said was owing.

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 the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court.

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. 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 Irma Edmonds, the 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 to Approve Compromise between Movant and Raymond Guerrero ("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 Ain support of the Motion (Dckt. 43).

11. 15-90358-E-11 LAWRENCE/JUDITH SOUZA MOTION TO SELL
MHK-17 Anthony Asebedo 9-22-16 [416]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least fourteen (14) 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 is granted.

The Bankruptcy Code permits the Debtor in Possession ("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 235 W. Syracuse Avenue, Turlock, California ("Property").

The proposed purchaser of the Property is Henry Chamaki and Liana Agakhanovi or assignee ("Buyers") and the terms of the sale are:

A. The Buyers are to pay a purchase price of $155,000.00. While the sale Price is $145,000.00, the Buyers are to pay an additional $10,000.00 to the second lien holder

B. The Buyers are to provide a $5,000.00 earnest deposit.

C. The sale is subject to approval from existing lien holders and the United States Internal Revenue Service as a short sale with amounts to be paid to lien holders pursuant to the chart referenced in the Motion.

D. The Debtor in Possession is to pay the from the sale a share of specific costs of sale, such as the escrow fee, title insurance, and property taxes, if due.

E. The Debtor in Possession is to pay the real estate sales commission an amount consisting of 6% of the sales price, or $8,700.00.

F. The sale escrow is to close within ten days of entry of the court order approving the sale, receipt of a Certificate of Discharge of Federal Tax Lien, and the vacation of the property by the tenant.

G. The real property is sold as-is with no representations or warranties from the Debtor in Possession or the estate.

DISCUSSION

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Lawrence Souza and Judith Souza, the 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 Lawrence Souza and Judith Souza, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Henry Chamaki and Liana Agakhanovi or assignee or nominee ("Buyers"), the Property commonly known as 235 W. Syracuse Avenue, Turlock, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyers for $155,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 419, 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 Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Debtor in Possession's broker, Keller Williamson Realty.

IT IS FURTHER ORDERED that the net sales proceeds, if any, after payment of the above authorized secured claims, costs, and expenses, shall be deposited in a segregated bank account maintained by the Debtor in Possession and not disbursed except upon further order of the court.

IT IS FURTHER ORDERED that the fourteen- day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

12. **15-90358-E-11** **LAWRENCE/JUDITH SOUZA** **MOTION TO EMPLOY BRIDGEFORD PROPERTY MANAGEMENT CORPORATION AS REAL PROPERTY MANAGER AND/OR MOTION FOR COMPENSATION FOR BRIDGEFORD PROPERTY MANAGEMENT CORPORATION, OTHER PROFESSIONAL(S)**
MHK-18 **Anthony Asebedo** **9-29-16 [423]**

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.

Correct 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 September 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. 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 Employ is granted.

Lawrence Souza and Judith Souza ("Debtor in Possession") seek to employ real property manager Bridgeford Property Management Corporation ("Manager"), pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment and compensation set at 8% of Manager to assist the Debtor in Possession with managing the Debtor in Possession's various rental properties.

The Debtor in Possession argues that Manager's appointment and retention is necessary to advertise rental property availability, collect rents, handle rental agreements, terminate tenancies as needed,

and supervise property repairs. The Debtor in Possession contends that Manager recently acquired Sequoia Property Management, who the court had approved the Debtor in Possession to employ and compensate at an 8% fee on May 27, 2015 (Dckt. 62).

Patricia Amador, shareholder and manager of Bridgeford Property Management, testifies that she is representing that Manager acquired Sequoia Property Management recently and is the named party in this motion. Ms. Amador testifies that she and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Manger, considering the declaration demonstrating that Manager does not hold an adverse interest to the estate and is a disinterested person, the nature and scope of the services to be provided, and considering that the court authorized the Debtor in Possession's previous property manager who has been superceded by Manager, the court grants the motion to employ Bridgeford Property Management as real property manager for the Chapter 11 estate on the terms and conditions set forth in the Agreements filed as Exhibits A and B, Dckt. 427. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 11 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 to Employ is granted and the Chapter 11 Debtor in Possession is authorized to employ Bridgeford Property Management as real property manager for the Chapter 11 Debtor in Possession on the terms and conditions as set forth in the Agreements filed as Exhibits A and B, Dckt. 427.

IT IS FURTHER ORDERED that the Debtor in Possession is authorized to pay the 8% fee on an interim basis, without further order, with the final authorization for all fees paid pursuant to 11 U.S.C. § 330 obtained by Bridgeford Property Management, with such fees subject to 11 U.S.C. § 328.

13. 13-92168-E-7 JCK-2 | **JOSEPH/NANISKA ITURRERIA** **Kathleen Crist** | **MOTION TO AVOID LIEN OF GEORGE W. LOWRY, INC.** **10-5-16 [29]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 5, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of George W. Lowry, Inc. ("Creditor") against property of Joseph Iturreria and Naniska Iturreria ("Debtor") commonly known as 16725 Sycamore Avenue, Patterson, California, and against property commonly known as Assessor's Parcel No. 048 3617 721 ("Properties").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,918.32. An abstract of judgment was recorded with Stanislaus County on December 5, 2011, which encumbers the Properties. Exhibit A, Dckt. 29.

Pursuant to the Debtor's Schedule A, the first subject real property has an approximate value of $200,000.00 as of the date of the petition. The unavoidable consensual liens total $240,857.00 as of the commencement of this case are stated on Debtor's Schedule D.

Also pursuant to Debtor's Schedule A, the second subject real property has an approximate value of $12,000.00 as of the date of the petition. The unavoidable consensual liens total $0.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Civil Procedure Code § 703.140(b)(5) in the amount of $12,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of George W. Lowry, Inc., California Superior Court for Stanislaus County Case No. SC448540, recorded on December 5, 2011, Document No. 2011-0099645-00, with the Stanislaus County Recorder, against the real property commonly known as 16725 Sycamore Avenue, Patterson, California, and Assessor's Parcel No. 048 3617 721, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. **13-92168-E-7** **JOSEPH/NANISKA ITURRERIA** **MOTION TO AVOID LIEN OF**
JCK-3 **Kathleen Crist** **AMERICAN EXPRESS BANK**
10-5-16 [21]

This appears to be a duplicate docket entry, with an amended version of the Motion and supporting pleadings (using the same Docket Control Number) filed and served on October 5, 2016, Dckts. 25–28.

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.

15. **13-92168-E-7** **JOSEPH/NANISKA ITURRERIA** **MOTION TO AVOID LIEN OF**
JCK-3 **Kathleen Crist** **AMERICAN EXPRESS BANK**
10-5-16 [25]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee and Office of the United States Trustee on October 5, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Bank ("Creditor") against property of Joseph Iturreria and Naniska Iturreria ("Debtor") commonly known as 16725 Sycamore

Avenue, Patterson, California, and against property commonly known as Assessor's Parcel No. 048 3617 721 ("Properties").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,147.22. An abstract of judgment was recorded with Stanislaus County on February 6, 2012, which encumbers the Properties.

Pursuant to the Debtor's Schedule A, the first subject real property has an approximate value of $200,000.00 as of the date of the petition. The unavoidable consensual liens that total $240,857.00 as of the commencement of this case are stated on Debtor's Schedule D.

Also pursuant to Debtor's Schedule A, the second subject real property has an approximate value of $12,000.00 as of the date of the petition. The unavoidable consensual liens that total $0.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Civil Procedure Code § 703.140(b)(5) in the amount of $12,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of America Express Bank, California Superior Court for Stanislaus County Case No. 665978, recorded on February 6, 2012, Document number 2012-0011250-00, by the Stanislaus County Recorder against the real property commonly known as 16725 Sycamore Avenue, Patterson, California, and Assessor's Parcel No. 048 3617 721, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

16. **09-94269-E-7** **SUSHIL/SUSEA PRASAD** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MEYER WILSON CO. LPA, TRANSAMERICA FINANCIAL ADVISORS INC. AKA WORLD GROUP SECURITIES, INC.**
MF-3 **James Pitner** **9-22-16 [152]**

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.

Correct 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 22, 2016. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Approve Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. 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 Compromise is granted.

Stephen Ferlmann, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Meyer Wilson Co. LPA, Transamerica Financial Advisors Inc. aka World Group Securities, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to an arbitration claim that became the focus of an adversary proceeding Movant and Settlor.

Movant and Settlor have resolved that claim, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 156):

A. Settlor shall pay to Movant the sum of $120,000.00, in full and complete settlement of the claims asserted by the Trustee in the adversary proceeding against Settlor.

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 Construction)*, 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 Committee for Independent Stockholders 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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

The Trustee believes that further litigation will result in excessive expense and risk due to additional amounts in attorney's fees. The Trustee believes that his theories for recovery of attorney's fees are sound, but Settlor strongly contests those claims. The settlement returns to the estate the transferred amount of $105,000.00 plus a premium of approximately $25,000.00, which may not have been achieved through litigation.

Difficulties in Collection

The Trustee sees no difficulty collecting from Settlor because Settlor is financially response and is insured.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs. Settlor procured an order securing a jury trial, and the Trustee believes that such a jury trial will greatly protract the litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the estate will receive funds in excess of what it may have recovered through 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 the Movant to purchase or prosecute the property, claims, or interests of the estate to 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. 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 Michael McGranahan, the 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 to Approve Compromise between Movant and Meyer Wilson Co. LPA, Transamerica Financial Advisors Inc. aka World Group Securities, Inc. ("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 A in support of the Motion (Dckt. 156).

17. **09-94269-E-7** **SUSHIL/SUSEA PRASAD** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD AND FERNANDEZ FOR IAIN A. MACDONALD, TRUSTEES ATTORNEY(S)**
MF-4 **James Pitner** **9-29-16 [158]**

The Court Did Not Allocate Adequate Time For Issuing a Tentative Ruling And Will Be Continuing the Matter for Final Hearing

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.

Correct 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 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Compensation was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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. 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 Compensation is continued to 10:00 a.m. on November 10, 2016, which matter may be removed from calendar and taken under submission without further notice.

Macdonald Fernandez, LLP, the Attorneys ("Applicant") for Stephen C. Ferlmann the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 1, 2014, through September 22, 2016. The order of the court approving employment of Applicant was entered on November 17, 2014. Dckt. 137. Applicant requests fees in the amount of $80,000.00 and costs in the amount of $3,020.96.

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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood,*

Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

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 3.4 hours in this category. Applicant assisted Client with examining the Debtor's affairs and prosecuting all necessary legal action; retained professionals; and prepared the fee application.

Avoidable Transfers: Applicant spent 138.9 hours in this category. Applicant drafted pleadings; conducted discovery; defeated a motion to withdraw reference; analyzed a summary judgment motion; negotiated and drafted settlements; and analyzed issues related to the discharge of the Chapter 13 Trustee.

Other Adversary Proceedings and Contested Matters: Applicant spent 1.7 hours in this category. Applicant advised the Trustee with respect to claims the Estate may hold against the Singh Chapter 7 estate and vise-versa..

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
Iain Macdonald	144	$350.00	$50,400.00
Reno Fernandez	4.20	$350.00	$1,470.00
Matthew Olsen	40.30	$250.00	$10,075.00
Roxanne Bahadurji	266.30	$250.00	$66,575.00
Total Fees For Period of Application			$128,520.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,020.96 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fees		$350.00
Photocopying	$0.20	$1,368.60
Deposition Transcripts		$671.25
Messenger, External Copies		$111.25
Telephonic Appearances		$227.60
Mileage, Toll, Parking		$119.76
Postage		$172.50
Total Costs Requested in Application		$3,020.96

FEES AND COSTS & EXPENSES ALLOWED

Because of several matters that required extensive preparation, the court did not make adequate time to review the present motion in advance of the October 20, 2016 hearing. In light of the significant amount of fees, the court wants to ensure that the record is clear of the court's consideration and allowance of fees.

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, ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Hearing is continued to 10:00 a.m. on November 10, 2016, which matter may be removed from calendar and taken under submission without further notice.

18. 15-90470-E-7 HCS-10 | **SUSAN FISCOE** / **David Johnston** | **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR WILLIAM EGGELING, REALTOR(S) 9-29-16 [130]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 29, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Sell was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Sell is granted.

The Bankruptcy Code permits the 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 421 SW Fairway Landing, Port Saint Lucie, Florida ("Property").

The proposed purchaser of the Property is John Keratsis and Steven Stamatogianis, or assigns ("Buyer") and the terms of the sale are:

A. The Buyer is to pay a purchase price of $155,000.00.

B. An initial deposit of $10,000.00 is to be held in escrow with Boston National Title.

C. The balance to close will be $145,000.00 with Closing on October 28, 2016.

D. The Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer's obligation to close.

E. Seller will deliver the property with marketable and insurable title, and free of all taxes, liens, judgments and encumbrances, or Seller will refund Buyer's deposit in full.

F. The sale is estimated to net the estate $65,609.92 after the following expenses:

1. The Realtor is to be paid a 6% ($9,300.00) commission and reimbursed $475.00 for out of pocket expenses;

2. The Trustee is to be reimbursed $1,075.08 for out of pocket expenses;

3. Estimated Closing Costs of $3,100.00 (2% of sale);

4. Homeowners fees/dues of $440.00; and

5. Debtor's exemption of $75,000.00.

DISCUSSION

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

IT IS ORDERED that the Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to John Keratsis and Steven Stamatogianis, or assigns or nominee ("Buyer"), the Property commonly known as 421 SW Fairway Landing, Port Saint Lucie, Florida ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $155,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 134, 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, out of pocket expenses for the Trustee and Broker, other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's broker, William Eggeling.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

IT IS FURTHER ORDERED that the $75,000.00 homestead exemption amount claimed by Debtor may be disbursed directly from escrow to Debtor pursuant to the written instructions of her counsel, David Johnston and confirmed by Gary Farrar, the Trustee. If not disbursed to Debtor directly from escrow, the monies shall be disbursed to the Trustee who shall then promptly disburse the $75,000.00 homestead exemption to the Debtor.

19. **16-90482-E-7** **ANGELO/JANICE ESVER** **MOTION FOR DENIAL OF DISCHARGE**
UST-1 **David Jenkins** **OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)**
8-23-16 [24]

Final Ruling: No appearance at the October 20, 2016 hearing is required.

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

Correct 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 23, 2016. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge 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 (14) 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 Objection to Discharge is sustained.

Tracy Hope Davis, Attorney for the United States Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on August 23, 2016. Dckt. 24.

The Objector argues that Angelo Esver and Janice Esver ("Debtor") are not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on May 15, 2009. Case No. 09-14471. The Debtor received a discharge on August 18, 2009. Case No. 09-14471, Dckt. 33.

The instant case was filed under Chapter 13 on June 3, 2016.

STIPULATION

On September 8, 2016, the parties filed a stipulation, in which both Objector and Debtor agreed that an order granting the motion may be entered as a final order in this case without a hearing because Debtor does not oppose the motion. Dckt. 30.

DISCUSSION

11 U.S.C. § 727(a)(8) states that a court shall grant a discharge to the debtor unless that debtor received a discharge under 11 U.S.C. § 727 with the eight years prior to the petition filing date of the instant bankruptcy case.

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 18, 2009, which is less than eight years preceding the date of the filing of the instant case. Case No. 09-14471, Dckt. 33. Therefore, pursuant to 11 U.S.C. § 727(a)(8), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-90482), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant 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 Objection to Discharge filed by Tracy Hope Davis, attorney for the United States 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 Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-94082, the case shall be closed without the entry of a discharge.

20. **15-90284-E-7** **ANTONIO/LUCILA AMARAL** **ORDER TO APPEAR FOR EXAMINATION**
Pro Se **(RAFAEL SALDANA)**
15-9057 **9-9-16 [50]**
MCGRANAHAN V. SALDANA
CASE CLOSED: 07/27/2016

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:

The Proof of Service states that the Order to Appear for Examination for Enforcement of a Judgment was served on Rafael Saldana ("Defendant"), and Office of the United States Trustee on September 9, 2016. By the court's calculation, 41 days' notice has been provided.

This is a post-judgment order to appear filed by the Plaintiff, Michael McGranahan, for the examination of the judgment creditor, Rafael Saldana. The court signed a default judgment on July 8, 2016, Dckt. 33.

The court's decision is to [discharge/sustain] the Order for Appearance and Examination for Enforcement of a Judgement.

Michael McGranahan, the Chapter 7 Trustee, applied for an Order for Appearance and Examination on September 9, 2016. As the judgment creditor, the Trustee ordered Rafael Saldana ("Judgment Debtor") to appear and furnish information to aid in enforcement of a money judgment against the Judgment Debtor.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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 Appear for Examination for Enforcement of a Judgment 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 is [discharged]/[sustained].

21. **14-91186-E-7** **DIMITRIOS/NANET VOULGARAKIS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)**
HCS-4 **David Johnston** **9-22-16 [69]**

Final Ruling: No appearance at the October 20, 2016 hearing is required.

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

Correct 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 22, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Compensation 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 (14) 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 Compensation is granted.

Herum\Crabtree\Suntag, a California Professional Corporation, the Attorney ("Applicant") for David Johnson the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 23, 2015, through August 24, 2015. The order of the court approving employment of Applicant was entered on February 3, 2016. Dckt. 26. Applicant requests fees in the amount of $10,831.00 and costs in the amount of $567.99.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958.

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the sale of Debtor's interest in Deanami Development Group, LLC. The court finds the services were beneficial to the Client and bankruptcy estate and 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 10.5 hours in this category. Applicant assisted Client with preparing and filing the employment application; reviewing legal issues raised by the petition, schedules, and deadlines; and working with the Trustee on a possible sale of Debtors' rental property.

Efforts to Assess and Recover Property of the Estate: Applicant spent 12.1 hours in this category. Applicant filed a Motion to Employ a realtor and accountant; sent a demand letter to Debtors' counsel for return of property and repair of damage; prepared a complaint against Debtors for turnover of property, conversion, interference with contractual rights, revocation of discharge; and negotiated with Debtors' counsel.

Sale of LLC Interest: Applicant spent 17 hours in this category. Applicant prepared a motion to sell the Debtors' Membership Interest; worked with a potential overbidder; and attended the hearing on the motion to sell.

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
Donna Suntag	18	$325.00	$5,850.00
Brett Jolley	7.4	$295.00	$2,183.00
Wendy Locke	10.2	$225.00	$2,295.00
Benjamin Codog	3	$175.00	$525.00
Total Fees For Period of Application			$10,853.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $567.99 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$107.79
Copying	$0.20	$377.80
Court Call Charges		$82.40
Total Costs Requested in Application		$567.99

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $10,853.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $567.99 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$10,853.00
Costs and Expenses	$567.99

pursuant to this Application 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 Herum\Crabtree\Suntag, a California Professional Corporation ("Applicant"), Attorney for the 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 Herum\Crabtree\Suntag, a California Professional Corporation is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, a California Professional Corporation, Professional Employed by Trustee
>
> Fees in the amount of $10,853.00
> Expenses in the amount of $567.99
>
> **IT IS FURTHER ORDERED** that the 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.

22. **14-91186-E-7** **DIMITRIOS/NANET VOULGARAKIS** **MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S)**
PEQ-1 **David Johnston** **9-22-16 [63]**

Final Ruling: No appearance at the October 20, 2016 hearing is required.

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

Correct 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 22, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Compensation 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 (14) 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 Compensation is granted.

Paul Quinn, Accountant for Eric Nims, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 24, 2015, through August 27, 2016. The order of the court approving employment of Applicant was entered on March 27, 2015. Dckt. 36. Applicant requests fees in the amount of $5,040.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including determining Debtors' interest in and the valuation of Deanami, LLC. The estate has $32,396.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES REQUESTED

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

Administration: Applicant spent 2.1 hours in this category. Applicant assisted Client with determining potential tax issues; valuing the LLC interest; and the preparation of the instant fee application.

Tax Preparation and Related Tax Matters: Applicant spent 18.9 hours in this category. Applicant analyzed Debtors' interest in Deanami, LLC; prepared a detailed memorandum to the Trustee and the Attorney for the Trustee regarding the determination of the valuation of the LLC; the potential tax issues and available tax attributes relating to the sale of the LLC interest..

Correspondence: Applicant spent 3.0 hours in this category. Applicant corresponded with the Internal Revenue Service and Franchise Tax Board's respective Insolvency Groups, requesting Prompt Audit Determination for each estate for the 2014, 2015, and 2016 trust tax returns for each estate.

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	11.2	$250.00	$2,800.00
Deborah Monis	12.8	$175.00	$2,240.00

Total Fees For Period of Application	$5,040.00

FEES ALLOWED

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $5,040.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $5,040.00

pursuant to this Application 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 Paul Quinn ("Applicant"), Accountant for the 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 Paul Quinn is allowed the following fees and expenses as a professional of the Estate:
>
> Paul Quinn, Professional Employed by Trustee
>
> Fees in the amount of $5,040.00
>
> **IT IS FURTHER ORDERED** that the 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.