UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

November 9, 2023 at 10:30 a.m.

1.	**20-90210-E-11** **AF-15**	**JOHN YAP AND IRENE LOKE** **Arasto Farsad**	**MOTION TO MODIFY CHAPTER 11 PLAN** **9-23-23 [303]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Attorneys of record who have appeared in the Bankruptcy Case, creditors holding the twenty largest unsecured claims, Creditors holding allowed secured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2023. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Modify the Chapter 11 Plan is xxxxx.

John Yap and Irene Loke ("Movant") seek to modify its confirmed Plan by reopening this case and "unwind a cram-down" of a first lienholder's mortgage loan, Proof of Claim 5-1." Claim 5-1 is held by the Bank of New York Mellon f/k/s/ the Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-through Certificates ("Creditor"). Creditor's first lien is attached to the real property commonly known as 2412 6th Street, Hughson, California 95326 ("Property"). In reopening this

case, Movant seeks to confirm a Modified Plan that purports to lower its monthly payment by $600.00 Motion, Dckt. 303. Movant filed its individual Chapter 11 Case on March 17, 2020. Dckt 1. Movant's Plan was confirmed on July 2, 2021 (Dckt. 229), and Movant received an Order granting an Application for Final Decree on December 2, 2022 (Dckt. 294).

The subject of Movant's Motion is the claim in Class 1D of the Confirmed Plan. Plan, Dckt. 209, p. 4. Class 1D contains Creditor's claim in the Property. Creditor's Proof of Claim originally depicted a secured claim in the amount of $405,421.01. POC, 5-1, p. 2. However, Movant filed a Motion to Value Collateral (the Property) on May 15, 2020 (Dckt. 62) which this court granted on September 3, 2020 (Dckt. 128), valuing the Property and secured claim at $301,324.00. Since Movant's Plan was confirmed on July 2, 2021, Movant has been paying $1,853.90 per month for this Class 1D claim. Movant now seeks to undo this court's September 3, 2020 Order granting the Motion to Value, thereby reinstating Creditor's previously asserted secured claim amount of $405,421.01, adding approximately $104,097.01 back to Creditor's claim.

Movant states that such an action will reduce its monthly payment to Class 1D by roughly $600.00. Declaration, Dckt. 305 ¶ 5. Movant's pre-petition mortgage payments to Creditor were $1,312.53 as stated in the Modification of Deed of Trust instrument, Exhibit, Dckt 306, p. 51, ¶ C. Movant asserts it needs that extra money to pay for medical bills, and that extra money would allow Movant to rely on its family support a little less. Declaration, Dckt. 305 ¶¶ 6, 9.

APPLICABLE LAW

11 U.S.C. § 1127(e) allows an individual debtor in a Chapter 11 case to modify the contents of a plan post-confirmation. It states,

> If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—
>
> > (**1)increase or reduce the amount of payments on claims of a particular class provided for by the plan**;
> >
> > (2)extend or reduce the time period for such payments; or
> >
> > (3)alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

11 U.S.C. § 1127(e) [emphasis added]. The Code further provides in 11 U.S.C. § 1127(f) that,

> (1)Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (e).
>
> (2)The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.

11 U.S.C. § 1127(f). Therefore, the Code permits an individual Chapter 11 debtor to modify the plan any time after confirmation upon request, whether or not the plan has been substantially consummated, but the modification remains subject to the requirements of 11 U.S.C. §§ 1121–1129, including a disclosure as required by 11 U.S.C. § 1125 – as the court may direct.

DISCUSSION

Movant petitions this court for a modification but has failed to show the court how the proposed modification will comply with 11 U.S.C. §§ 1121-1129. A review of the docket on November 1, 2023 reveals that there has been no submission of a proposed modified plan, a disclosure statement, or any information suggesting that Creditor will agree to the proposed modification. Movant informs the court in its Motion and supporting Declaration that "BNY appears willing to unwind the cram-down." Declaration, Dckt. 305 ¶ 5. The court is not inclined to accept this conclusory statement without some supporting evidence.

Review of Motion and Grounds Stated With Particularity Therein

The Motion seeking modification of the Confirmed Plan states the following grounds (as summarized by the court):

A. Debtors seek to unwind a cramdown of the Bank of New York Mellon's ("Creditor") secured claim in the Confirmed Plan.

B. The modification will be to increase the Creditor's secured claim by $104,097, vacating the court's prior order valuing Creditor's secured claim at the value of the collateral securing the claim.

C. By adding the $104,097 to the secure claim and going back to the pre-petition terms of the loan, Debtors can reduce their monthly payment to Creditor by $600.

D. Debtors will use the additional $600 a month for their expenses, and let the family support of $1,350.00 for the funding of the Confirmed Plan to be reduced.

E. The fixed rate terms of the secured claim is at an interest rate for which the principal, interest, insurance, and taxes are only $1,276.18 a month. Under the Plan, even with the reduced amount of the secured claim, Debtors are paying $1,853.90 a month.

Exhibit C is a copy of Creditor's Proof of Claim, on which the interest rate is stated to be 3% per annum. It appears that while the Proof of Claim is filed for a $405,421.01, the monthly payments are computed on a principal balance of $280,269, and that there is a deferred principal balance of $125,201.45.

Attached to Creditor's Proof of Claim 5-1 is a Modification of Deed of Trust, which also appears to be a modification of the loan it secured. The $280,269 interest bearing portion of the debt is reamortized over forth (40) years at 3% interest, with a balloon payment of the $125,201.45 deferred principal balance due upon sale of the property, when the interest bearing principal balance is paid, or when the loan matures.

F. It is possible that Creditor will work out a stipulation to allow for the $1,276.18 payments going forward.

No stipulation has been presented to the court.

The Motion does not state the grounds for confirmation of a modified plan, but merely states the Bankruptcy Code sections which must be complied with. Debtor's counsel states a conclusion that the Bankruptcy Code has been complied with, and it is likely only Creditor will vote for confirmation of the modified plan.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See In re Weatherford*, 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

November 9, 2023 Hearing

It is unclear from the pleadings whether the confirmation requirements for a modified plan have been met. From the pleadings, it appears that Debtors have concluded that they cannot perform the Plan and pay a creditor only the amount of its secured debt, but elect to "mortgage the future" and take on debt well in excess of the value of the collateral - effectively making them "tenants" of Creditor.

At the hearing, **xxxxxxx**

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 Modify the Chapter 11 Plan filed by John Yap and Irene Loke ("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 Modify is **xxxxxxx**

2. **22-90415-E-7 GG-10** | **JOHN MENDOZA** **Peter Macaluso** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF GOLDEN GOODRICH LLP FOR JEFFREY I. GOLDEN, SPECIAL COUNSEL(S)** **9-29-23 [160]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on September 29, 2023. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for First Interim Allowance of Professional Fees is granted.

Golden Goodrich LLP, the Special Counsel ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Trustee"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 19, 2023, through August 31, 2023. The order of the court approving employment of Applicant was entered on May 19, 2023. Dckt. 75. Applicant requests fees in the amount of $13,860.00 and costs in the amount of $911.16.

As the Motion discusses, this is a somewhat unusual situation in which special counsel has been engaged to pursue investigation of potential assets, and the monies to pay the fees are funded by a major creditor in this case. Civ. Minutes, Motion to Approve Compromise; Dckt. 72. The creditor will be reimbursed for the fee and expense monies advanced by monies from assets that special counsel is able to recover for the Bankruptcy Estate. *Id*.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include asset analysis and recovery, and the employment/fee application. The court finds the services were beneficial to Client and the Estate and were reasonable.

TRUSTEE'S NON-OPPOSITION

The Chapter 7 Trustee, Gary Farrar, filed a Declaration of Non-Opposition to the Application on October 27, 2023. Dckt. 219.

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.

Efforts to Assess and Recover Property of the Estate: Applicant spent 78.30 hours in this category. Applicant analyzed documentation and information provided by to the Trustee. Motion, Dckt. 160. The Applicant reviewed documents received by counsel for the Trustee, including the Debtor's bank statements, vehicle records, utility bills, trust agreement, real property records, the operating agreement, and assignment of membership interest. *Id*.

The Applicant conferred with the Trustee and counsel, analyzed various properties and their values, research legal issues concerning potential claims that might be asserted to recover property transferred by the Debtor and related entities. *Id*. Applicant developed litigation strategies for recovery of assets. *Id*.

The Applicant prepared and filed motions for the 2004 examinations and production of documents, all which were approved by the court. *Id*. The Applicant issued subpoenas but encountered difficulty serving the subpoenas due to lack of valid addresses. *Id*. Therefore, Applicant also coordinated dates for examination of various parties at scheduled dates and times. *Id*.

Applicant is coordinating dates for examination with other persons, and is preparing motions for 2004 examination and production of documents. *Id*.

Employment/Fee Application: Applicant spent 7.10 hours in this category. Applicant prepared the monthly fee statement and the Application. *Id*.

Applicant submits it worked 85.40 hours on this matter but only billed for 42.7 hours. 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**
Jeffrey I. Golden, Attorney	2.00	$600.00	$1,200.00
Christopher A. Minier, Attorney	6.20	$600.00	$3,720.00
Beth E. Gaschen, Attorney	.90	$600.00	$540.00
Claudia M. Yoshonis, Paralegal	31.70	$250.00	$7,925.00
Cynthia B. Meeker, Paralegal	1.90	$250.00	$475.00
Total Fees for Period of Application			$13,860.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $911.16 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Subpoena service		$758.80
Online Research - Thomas Reuters		$129.86
Court Call		$22.50
Total Costs Requested in Application		$911.16

FEES AND COSTS & EXPENSES ALLOWED

Order on Motion to Employ

Pursuant to the Order on May 19, 2023, no compensation is permitted to be paid to the Applicant except upon court order following an application pursuant to 11 U.S.C. § 331 and § 330 and subject to the provisions of 11 U.S.C. § 328. *See* Order, Dckt. 75. However, in its Order authorizing employment, the court also authorized the Trustee to pay the legal fees and expenses on an interim basis that the Trustee determines are reasonable for the services provided by the Applicant for the Estate. *Id*. Trustee's authorization was subject to the Trustee filing a monthly running report stating the fees and costs paid for the then current and previous months. Applicant was ordered to file an interim fee application at least every four months, with the first application to be filed in September 2023. *Id.*

The Applicant filed a "Monthly Fee Statement" on August 25, 2023, for reimbursement of expenses for the period of May 19, 2023, through July 31, 2023. Dckt. 155. Subsequently thereafter, the Applicant filed a "Certificate of No Objection" on September 27, 2023, stating that because the notice period for the "Monthly Fee Statement" expired on September 25, 2023 without any objection, Trustee was authorized to pay the fees and expenses requested. Dckt. 158. This is not completely correct. As stated above, the court ordered the Trustee to file a monthly running report, not the Applicant.

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $13,860.00 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 Chapter 7 Trustee from the available funds of the WVJP 2021-4, LP line of credit, less the $9,317.50 already paid to the Applicant.

Costs & Expenses

First Interim Costs in the amount of $888.66 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 Chapter 7 Trustee from the available funds of the WVJP 2021-4, LP line of credit. The court does not authorize the Court Call cost of $22.50 to be eligible for reimbursement

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

Fees	$13,860.00, less the $9,317.50 already paid
Costs and Expenses	$888.66

pursuant to this Application as 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 Golden Goodrich LLP ("Applicant"), Special Counsel for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Golden Goodrich LLP is allowed the following fees and expenses as a professional of the Estate:

Golden Goodrich LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $13,860.00 and
Expenses in the amount of $888.66,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Trustee is authorized to pay the balance of the interim fees and expenses allowed above, after providing credit for the $9,317.50 in payments previously made as authorized by the order of this court for employment of Applicant.

3. **22-90225-E-7** **AVINASH SINGH** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY LLP FOR DANIEL L EGAN, TRUSTEES ATTORNEY(S)**
WF-5 **David Johnston** **10-18-23 [155]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, attorneys of record who have appeared in the bankruptcy case, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on October 18, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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.

Wilke Fleury LLP, the Attorney ("Applicant") for Geoffrey Richards, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 3, 2023, through September 30, 2023. The Order of the court approving employment of Applicant was entered on June 1, 2023. Dckt. 116. Applicant requests fees in the amount of $36,246.50 and costs in the amount of $628.24.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration, asset analysis and recovery, the fee/employment application, and handling claim administration and objections.

Through the prosecution of this case, The Trustee has entered into a settlement with the Debtor that will generate $275,000 for the Bankruptcy Estate, of which $62,000 has been received and the Debtor is current on the monthly payments that are scheduled for the next ten months.

TRUSTEE'S NON-OPPOSITION

The Chapter 7 Trustee, Geoffrey Richards, filed a Non-Opposition to the Application on October 18, 2023. Dckt. 159.

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 21.50 hours in this category. Applicant represented and advised the Trustee regarding the case, reviewed pleadings and papers filed, and conferred with the Trustee regarding strategy st various stages of the case. Motion, Dckt. 155. Applicant also conferred with creditors, Debtor's counsel, the former Chapter 11 Trustee, and the Trustee's tax professional in gathering relevant information. *Id.* Applicant attended the meeting of creditors and obtained extensions of the time to object to Debtor's discharge. *Id*.

Efforts to Assess and Recover Property of the Estate: Applicant spent 50.30 hours in this category. Applicant negotiated, documented, and obtained approval of the complicated transaction underlying the sale of the residence to the Debtor. *Id*. Applicant participated in strategy calls with Trustee and Trustee's tax professional, assisted in negotiating the transaction and, once the terms were negotiated, documented the transaction. *Id*. Applicant prepared and prosecuted motions to implement the agreement. *Id*.

Fee/ Employment Application: Applicant spent 2.7 hours in this category. Applicant prepared and prosecuted an application for approval of its employment. *Id*. Applicant also conferred with Trustee regarding retention of a real estate broker that was ultimately not retained. *Id*.

Claims Administration and Objections: Applicant spent 2.1 hours in this category. Applicant investigated and evaluated the disputed claims filed by the San Joaquin County Tax Collector and Bahman Noori. *Id*.

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 L.Egan, Attorney	64.30	$495.00	$31,828.50
Jason G. Eldred, Attorney	12	$345.00/ $360.00	$4,358.00
Sharon Brazell, Paralegal	.30	$200.00	$60.00
Total Fees for Period of Application			$36,246.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $628.24 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Delivering Services		$414.80
Certified Copies		$15.00
Fedex		$32.41
Photocopies		$120.40
Postage		$45.63
Total Costs Requested in Application		$628.24

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $36,246.50 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 Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First Interim Costs in the amount of $628.24 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 Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7case.

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

Fees	$36,246.50
Costs and Expenses	$628.24

pursuant to this Application as 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 Wilke Fleury LLP ("Applicant"), Attorney for Geoffrey Richards, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Wilke Fleury LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Wilke Fleury LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $36,246.50
> Expenses in the amount of $628.24,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Trustee is authorized to pay the above fees allowed on an interim basis, in the Trustee's discretion and consistent with the order of disbursement in a Chapter 7 case.

4. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION TO ABANDON**
FWP-13 **Pro Se** **4-8-21 [1410]**

Item 4 thru 5

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 Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Abandon is xxxxx.

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwarzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwarzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwarzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwarzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

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

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

Bifurcated Abandonment of the Murphy Ranch Properties

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

September 8, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

OCTOBER 17, 2022 HEARING

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

DECEMBER 15, 2022 HEARING

On December 13, 2022, Focus Management Group USA, Inc., the Chapter 11 Plan Administrator filed in updated Status Report. Dckt. 1805. The Plan Administrator reports that American AgCredit has confirmed that the issues relating to the Lot Line Adjustment have resolved and the adjustment has been completed.

The Plan Administrator reports that with that completed, the Parties can proceed with a global settlement. The Plan Administrator requests that the hearing on this Motion be continued to the court's January 26, 2023 Calendar so that the Plan Administrator and the other parties can continue with the global negotiations.

At the hearing, counsel for the Plan Administrator reported that the global settlement negotiations were proceeding and the Parties agreed to continue this hearing.

JANUARY 26, 2023 HEARING

As of the court's January 25, 2023 review of the Docket, no updated status report had been filed or information about whether the Plan Administrator would or could proceed with the abandonment.

At the January 26, 2023 hearing, counsel for the Plan Administrator reported that the timing of events have been driven by dealings with Arambel.

The Murphy Ranch property in this case is part of the global settlement in the various related cases.

The Plan Administrator requested a continuance to allow the parties to wrap up their settlement discussions.

APRIL 20, 2023 HEARING

At the hearing counsel for the Plan Administrator requested that the hearing be continued to be conducted in conjunction with the Final Hearing Scheduling Conference for the Plan Administrator's Motion to Abandon in the Filbin Land & Cattle Bankruptcy Case.

JUNE 8, 2023 HEARING

At the hearing, the Plan Administrator requested that this matter be continued to be conducted in conjunction with the hearing in the Filbin Land and Cattle Case for a supplemental Order in Aid of Enforcement of the Confirmed Plan in that case.

JULY 20, 2023 HEARING

At the hearing, the Parties addressed their efforts to settle the dispute. The Parties requested a further continuance.

SEPTEMBER 7, 2023 HEARING

At the hearing, the Parties agreed to continue the hearing and have it conducted as a Status Conference in conjunction with the evidentiary hearing in the Filbin Land and Cattle Case.

NOVEMBER 9, 2023 HEARING

At the hearing, **xxxxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Abandon is **xxxxxx**.

5. 18-90029-E-11 FWP-28 JEFFERY ARAMBEL Pro Se MOTION TO USE CASH COLLATERAL 10-20-23 [1927]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is granted, and xxxxxxx .

Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator"), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC ("Summit") for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit's cash collateral constitutes the sole source of funds to operate Debtor's business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows:

Arambel Cash Budget Plan of Conversion of Remaining Assets	Actual July 46	Actual August 47	Actual September 48	October 49	November 50	December 51	Funeral Expense 13th Month	Cumulative Post January 2021 Period
Starting Cash	$ 3,473,636	$ 3,457,916	$ 3,436,787	$ 3,429,373	$ 3,415,994	$ 3,396,324	$ 3,367,254	$ 1,601,766
Cash-In								
Summit Funding	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
MetLife Funding	-	-	-	-	-	-	-	-
FLCC Deposit	-	-	-	-	-	-	-	500,390
Additional Funding/LBA Settlement	-	-	-	-	-	-	-	525,118
Farm Equipment Auction Net Proceeds	-	-	-	-	-	-	-	172,546
Property Tax Refunds - Stanislaus County	-	-	-	-	-	-	-	157,169
Crop Retainage/Coop Patronage	-	-	-	-	-	-	-	-
IRS/CA Tax Refunds	-	-	-	-	-	-	-	1,544,827
Rental Income	-	-	-	-	-	-	-	17,928
Property Sales	-	-	-	-	-	-	-	-
Total Cash-In	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,917,978
Cash-Out								
Personal Expenses								
Total Personal	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Farm Expenses								
Lot Line Adj and Other Asset Admin	153	144	144	170	170	170	2,000	11,587
Reorganizing Debtor's Professionals	-	-	-	-	-	-	-	11,645
Total Farm	$ 153	$ 144	$ 144	$ 170	$ 170	$ 170	$ 2,000	$ 23,232
Plan Expenses								
Insurance	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 12,462
Property Taxes	-	-	-	-	-	9,400	10,000	198,642
Accountant	2,331	2,961	-	63	2,000	2,000	5,000	73,633
Plan Administrator's Attorneys	7,139	11,947	2,475	10,000	10,000	10,000	17,500	407,985
US Trustees Fees	500	-	-	500	-	-	26,938	37,828
Plan Administrator Fees	5,598	6,077	4,794	2,646	7,500	7,500	20,000	477,971
Contingency Reserve	-	-	-	-	-	-	903,030	903,030
Total Plan	$ 15,567	$ 20,985	$ 7,269	$ 13,209	$ 19,500	$ 28,900	$ 982,468	$ 2,111,551
Sub-Total	$ 15,720	$ 21,129	$ 7,414	$ 13,379	$ 19,670	$ 29,070	$ 984,468	$ 2,134,784
Accrued Professional Fees	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
2022 Income Tax	-	-	-	-	-	-	-	2,174
Unpaid Utilities	-	-	-	-	-	-	-	-
Class 2 Pre-Petition Property Taxes	-	-	-	-	-	-	-	-
Class 3 Cure Payments	-	-	-	-	-	-	-	-
Sub-Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,174
Property Sale Disbursements								
Payment on Debt - Brighthouse	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Payment on Debt - Summit	-	-	-	-	-	-	2,382,786	2,382,786
Sale Expenses (Title, Escrow, Recording)	-	-	-	-	-	-	-	-
Property Taxes	-	-	-	-	-	-	-	-
Other Costs Paid at Closing	-	-	-	-	-	-	-	-
Sub-Total	$ -	$ -	$ -	$ -	$ -	$ -	$ 2,382,786	$ 2,382,786
Total Cash-Out	$ 15,720	$ 21,129	$ 7,414	$ 13,379	$ 19,670	$ 29,070	$ 3,367,254	$ 4,519,744
Ending Cash	$ 3,457,916	$ 3,436,787	$ 3,429,373	$ 3,415,994	$ 3,396,324	$ 3,367,254	$ 0	$ (0)
Period Ending Cash Balance:								
PA Operating Account	$ 335,458	$ 314,473	$ 307,204	$ 294,245	$ 274,745	$ 245,845	$ (3,120,800)	
PA Filbin Account	954	954	954	704	704	704	704	
PA U.S. Trustee Fees Reserve	-	-	-	-	-	-	-	
PA 10% Holdback after $2M to Summit	-	-	-	-	-	-	-	
PA Tax Reserve Account	3,121,503	3,121,359	3,121,215	3,121,045	3,120,875	3,120,705	3,120,097	
RD Checking/Petty Cash	-	-	-	-	-	-	-	
Period Ending Cash Balance	$ 3,457,916	$ 3,436,787	$ 3,429,373	$ 3,415,994	$ 3,396,324	$ 3,367,254	$ 0	

Exhibit A, Dckt. 1930.

Proposed Stipulation

Summit entered into a stipulation with the Plan Administrator detailing how Summit's cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit's cash collateral, and Summit is willing to consent to the Plan Administrator's use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

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

DISCUSSION

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for "plan

payments" or use of any "profit" by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continues the hearing to xx:xx x.m. on xxxx, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplement is due by xxxx, 2024 (seven days before hearing), with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period October 1, 2023 through December 31, 2023, and the cash collateral may be used to pay expenses, in accordance with the proposed stipulation and plan budget, Exhibits A, 1, Dckt. 1930.
>
> **IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.
>
> **IT IS FURTHER ORDERED** that the hearing on the Motion is continued to xx:xx x.m. on xxxx, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before xxxx, 2024, Plan Administrator shall file and serve supplemental pleadings for the further use of cash collateral and notice of the xxxx, 2024 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing

6.	**10-92283-E-7** **BLF-3**	**SERGIO/GENOVEVA MONTOYA** **Pro Se**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT** **10-18-23 [43]**

Item 6 thru 7

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on October 18, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Gary R. Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Monsanto Roundup ("Settlor"). The claims and disputes to be resolved by the proposed settlement include allowing the Movant to collect $338,441.42 ($172,614.25 after special counsel fees and costs if approved by the court) for the bankruptcy estate without the expense, uncertainty, or delay of costly litigation. Motion, Dckt. 43.

Movant submits this Motion to Compromise for the estate's interest in a multi-district product liability lawsuit ("Lawsuit") relating to the alleged injuries and medical expenses incurred resulting from Mrs. Montoya's use or exposure to Roundup/Glyphosate for many years. *Id*. The debtor, Sergio and

Geneva Montoya ("Debtor"), filed a Chapter 7 case on June 15, 2010, and the case was closed on October 1, 2010. *See* Final Decree, Dckt. 19. Debtor did not list the potential claims or the Lawsuit on its schedules and did not later amend its schedules to disclose the claims or the Lawsuit. Motion, Dckt. 43.

On August 25, 2021, the court reopened the case to allow for administration of the Lawsuit for the benefit of the creditors in Debtor's bankruptcy estate. *See* Order, Dckt. 22. On April 13, 2023, the court authorized the employment of Special Counsel to continue litigating the Lawsuit. *See* Order, Dckt. 42.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court, on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 46):

CLIENT DISBURSEMENT STATEMENT

This disbursement statement refers to your claim for injuries against Monsanto Roundup. Please see the attached cover letter for a detailed explanation of your disbursement statement

Gross Settlement Award (GSA)	**$441,738.52**
THIS IS THE FINAL AWARD	
Allocation of Client Funds	
Client Share of GSA %	60.00%
Client Share of GSA $	$265,043.11
Less Lien Resolution Amount	- $88,476.88
Less Lien Resolution Fees	$675.00
Less EIF/Appeal Fee *If Applicable*	500.00
Less Individual Client Reimbursable Expenses *INCLUDES ALL IND EXP FOR MEDICAL RECORDS, PROBATE CHARGES ETC*	$875.16 (see pg. 2) - $1819.44
Less Pro Rata Share of General Reimbursable Expenses	
Less Amount to Bankruptcy Trustee *If Applicable*	Unknown*
Less Pre-Settlement Loan Payment *If Applicable*	- $0.00
*=NET CLIENT DISBURSEMENT**	$172,614.25*

Allocation of Attorney Fees	
Attorney Share of GSA %	40.00%
Less 8% CBF Assessment *If Applicable*	$0.00
CONTINGENCY LEGAL FEE	$176,695.41
Balaban Law Fees	$93,648.57
Hensley	$70,678.16
Andrus Wagstaff	$12,368.68

Movant submits its own Declaration and special counsel Sarah Wolter's Declaration in support of this Motion. Declaration, Dckts. 47, 48. In their Declarations, Movant and Ms. Wolter authenticate the facts asserted in their Memorandum of Points and Authorities in Support of the Motion to Compromise (Dckt. 45). Ms. Wolter further testifies about the details as to how she reached the settlement with Settlor. Declaration, Dckt. 47.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise

is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant states the probability of success on the Lawsuit is uncertain. Memorandum, Dckt. 45. To resolve the Lawsuit, difficult factual and legal issues would have to be litigated. Declaration, Dckt. 47. The Debtor's central assertion was that Mrs. Montoya suffered personal injuries and medical expenses as a result of her use or exposure to Roundup/Glyphosate manufactured by Settlor. *Id.* However, the Settlor denies all allegations against it and raises numerous defenses, including, but not limited to, failure to state a claim, lack of standing, and Mrs. Montoya's failure to exercise ordinary care for her own safety caused the injuries. *Id*.

Special Counsel is aware of only a few cases involving similar claims that have been tried. *Id.* Cases in which the plaintiff received a judgment are being appealed by manufacturers. *Id.* Movant believes this shows difficulties in getting a case to trial. Memorandum, Dckt. 45. Mrs. Montoya's injuries could be caused by various medical conditions, making the necessary element of causation at trial difficult and unlikely that a jury would award more than the proposed compromise. Declaration, Dckt. 47.

Difficulties in Collection

Movant argues that recovery in the Lawsuit through litigation would be limited by several factors. Memorandum, Dckt. 45. The Lawsuit would be extremely costly to prosecute because of the numerous medical experts witness reviews. *Id*. Further, Movant argues that even if there were recovery at trial, the defense would most likely elect to appeal, and the recovery would be further reduced litigating such appeal. *Id*. While Movant is not aware of any difficulties that could arise if he were to obtain a judgment, the Compromise is reasonable and allows for the certainty of recovery and payment to the estate. *Id*.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues again that the success of the Lawsuit is not certain, and that without a settlement, Special Counsel for the estate will need to prepare for trial and incur litigation costs. *Id*. The additional cost

of litigation will reduce any recovery that may be retained later. *Id*. With no pending trial date, the recovery, if any, would be delayed for a year or more. *Id*. After that, there could be post-trial motions and appeals that would further delay the final outcome. *Id*. In contrast, the Movant notes that the compromise would result in an immediate payment to the estate, avoiding expense, inconvenience, and delay. *Id*.

Paramount Interest of Creditors

Movant contends that the proposed compromise allows him to collect $338,441.42 ($172,614.25 after payment of special counsel's fees and costs if and once approved) for the bankruptcy estate. *Id*. Therefore, the compromise results in significant savings in time and administrative expense by avoiding further litigation. *Id*. The compromise approaches a fair solution of the case without any attendant uncertainty. Declaration, Dckt. 48.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids further litigation costs and allows the bankruptcy estate to recover for payment to creditors. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Monsanto Roundup ("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. 46).

7.	**10-92283-E-7** **BLF-4**	**SERGIO/GENOVEVA MONTOYA** **Pro Se**	**MOTION FOR COMPENSATION FOR BREANNA ALEXANDER, JOHN HENSLEY AND SARAH WOLTER, SPECIAL COUNSEL(S).** **10-18-23 [50]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on October 18, 2023. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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.

Gary Farrar, the Chapter 7 Trustee ("Applicant"), makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of the work done by Hensley Legal Group, P.C.; Andrus Wagstaff, P.C.; and Balaban Law, LLC (collectively "Special Counsel").

Fees are requested in the amount of $176,695.41, which is 40% of the settlement amount of $441,738.52 also being considered by this court (DCN. BLF-3). The Order of the court approving employment of Special Counsel was entered on April 13, 2023. Dckt. 42. Trustee further requests costs be reimbursed for Special Counsel in the amount of $3,591.98.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the special counsel exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Special Counsel's services for the Estate include recovering a substantial sum of money resulting from a settlement relating to debtor Genoveva Montoya's death.

The Bankruptcy Estate is recovering a $441,738.52 gross settlement, from which the fees and costs will be paid. The court finds the services were beneficial to the estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered for the estate. Special Counsel represented debtor Sergio Montoya ("Debtor") in litigation involving the untimely death of his wife, Genoveva Montoya, resulting from her exposure to Roundup. Applicant and Debtor agreed to a contingent fee of 40% of the gross settlement amount, totaling $176,695.41 out of the $441,738.52 award. In approving the employment of Special Counsel, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. §§ 328(a), 330. $172,614.25 of net monies (after deduction of these requested fees and costs) was recovered for Client.

The requested fees are to be divided amongst Special Counsel as follows:

Names of Professionals and Experience	**Total Fees Computed Based on Time and Hourly Rate**
Balaban Law, LLC	$93,648.57
Andrus Wagstaff, P.C.	$12,368.68
Hensley Legal Group, P.C.	$70,678.16
Total Fees for Period of Application	$176,695.41

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,591.98 pursuant to this application.

The costs requested in this Application are:

ITEM			AMOUNT
Common Benefit Expenses:			$2,451.54
-Lien Resolution Fees		$675.00	
-Andrus Wagstaff Expenses		$31.54	
-US Legal Support Inc.:	$22.26		
-Filing Exp. (pro rata):	$1.59		
-Interest:	$7.69		
-Andrus Wagstaff Admin Fee:		$250.00	
-Epiq Settlement Mgmt. Admin Fee:		$395.00	
-Special Master Fee:		$600.00	
-Special Master EIF/Appeal Fee:		$500.00	
Balaban Costs:			$1,500.44
-Travel, Court Cost, Experts (pro rata):		$584.44	
-American Retrieval:		$5.00	
-American Retrieval:		$61.00	
-Schulte Consulting:		$600.00	
-Interest:		$250.00	
Total:			**$3,591.98**

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for the estate are reasonable and a fair method of computing the fees of Special Counsel in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $176,695.41 pursuant to 11 U.S.C. § 330 for these services provided by Special Counsel for the estate. The Chapter 7 Trustee is authorized to pay from the settlement funds held in the Qualified Settlement Fund Trust in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $3,591.98 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$176,695.41
Costs and Expenses	$3,591.98

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gary Farrar ("Applicant"), the Chapter 7 Trustee, on behalf of the work done by Hensley Legal Group, P.C.; Andrus Wagstaff, P.C.; and Balaban Law, LLC (collectively "Special Counsel"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hensley Legal Group, P.C.; Andrus Wagstaff, P.C.; and Balaban Law, LLC are allowed the following fees and expenses as a professional of the estate:
>
> Hensley Legal Group, P.C., Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $70,678.16
>
> Andrus Wagstaff, P.C., Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $12,368.68
>
> Balaban Law, LLC, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $93,648.57
>
> Costs in the amount of $3,591.98, to be disbursed to the above Special Counsel in the amounts set forth in a joint statement provided by the Special Counsel to the Trustee.
>
> as the final allowance of fees and costs pursuant to 11 U.S.C. § 330 as Special Counsel for the Chapter 7 Trustee. The Chapter 7 Trustee is authorized to pay the forgoing allowed fees and expenses, in the Trustee's discretion, consistent with the order of distribution in this Chapter 7 case.

8. **23-21407-E-11 PGM-3** | **BELLA VIEW CAPITAL, LLC** **Peter Macaluso** | **MOTION TO RECONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 O.S.T. 11-3-23 [179]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2023. By the court's calculation, 6 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

Although short of the required 21 days' notice period, the court shortens the notice period to 6 days, as this court granted Debtor in Possession's Application to Shorten Time on November 6, 2023. Order, Dckt. 185. Given the fact that the U.S. Trustee's Motion to Dismiss or Convert in this case is pending for November 30, 2023 (Dckt. 169), November 9, 2023 is an appropriate date to hear Debtor in Possession's current Motion to Convert.

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Creditors, the Chapter 11 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 Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

The Debtor in Possession, Bella View Capital, LLC ("Debtor in Possession," "Movant") has filed this Motion to Convert the Chapter 11 bankruptcy case to one under Chapter 7. Dckt. 179. Movant asserts that the case should be converted based on the following grounds:

1. The Debtor in Possession seeks a fresh start, and the Debtor in Possession meets the requirements of 11 U.S.C. § 706(b).

2. The Debtor in Possession originally filed a Chapter 7 case but converted to a case under Chapter 11 to try and sell its real property. It has been unsuccessful in doing so.

3. The Debtor in Possession would like a Chapter 7 Trustee's assistance in selling the Debtor in Possession's real property and assets.

Dckt. 179. Debtor in Possession submits the Declaration of Joly Gagni in support, who claims to be a Debtor in this case. Declaration, Dckt. 181. Ms. Gagni is the president of BellaView Capital, LLC (Dckt. 26, p. 1), the Debtor in Possession limited liability company. Ms. Gagni is not a Debtor in her individual capacity.

In her Declaration, Ms. Gagni submits to the court that reconversion to Chapter 7 is in the best interest of the estate as it would allow a Chapter 7 Trustee to sell assets of the bankruptcy estate and pay creditors in full. Declaration, Dckt. 181, ¶ 5.

APPLICABLE LAW

Questions of conversion or dismissal under 11 U.S.C. § 1112(b) must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

In questions regarding conversion under 11 U.S.C. § 1112(a), "[s]ection 1112(a) appears to give the debtor an absolute right to convert a chapter 11 case to a case under chapter 7, provided that none of the three limited exceptions apply." 7 COLLIER ON BANKRUPTCY ¶ 1112.02. The Bankruptcy Code Provides:

> (a)The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—
>
> > (1)the debtor is not a debtor in possession;
> > (2)the case originally was commenced as an involuntary case under this chapter; or
> > (3)the case was converted to a case under this chapter other than on the debtor's request.
>
> (b)
> (1) [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. §§ 1112(a), 1112(b)(1).

DISCUSSION

Movant cites to 11 U.S.C. § 706(b) in support of this Motion. That section of the Code states, "[o]n request of a party in interest and after notice and a hearing, *the court may convert a case under this chapter to a case under chapter 11* of this title at any time." 11 U.S.C. § 706(b) (emphasis added). This section of the code is not relevant because the Debtor in Possession seeks to convert from Chapter 11 to Chapter 7, not from Chapter 7 to Chapter 11.

However, in this case, conversion remains proper under the applicable code section 11 U.S.C. § 1112(a). None of the three limited exceptions of Section 1112(a) apply. The Debtor is serving as Debtor in Possession, this case was not initiated as an involuntary case under Chapter 11, and this case was converted to a Chapter 11 case from a Chapter 7 case on the Debtor's request.

Therefore, the Motion is granted, and the case is converted to a case under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 11 case filed by Debtor in Possession, Bella View Capital, LLC 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

FINAL RULINGS

9.	**23-90283-E-11** **CAE-1**	**BRUNK INDUSTRIES** **David Johnston**	**CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION** **6-26-23 [1]**

Item 9 thru 10

Final Ruling: No appearance at the November 9, 2023 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:
Continued from 10/19/23, the Debtor/Debtor in Possession reported that there will be no opposition to the Motion to Dismiss or Convert.

Trustee Report at 341 Meeting lodged 10/24/23

The court ordering that this case be converted to one under Chapter 7, **the Status Conference is concluded and removed from the Calendar.**

10. 23-90283-E-11 UST-1 — BRUNK INDUSTRIES — David Johnston — MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE 9-20-23 [39]

Final Ruling: No appearance at the November 9, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors and parties in interest, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on September 20, 2023. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Convert or Dismiss this Chapter 11 Subchapter V Case is granted and the case is converted to one under Chapter 7.

The United States Trustee, Tracy Hope Davis, ("Trustee") filed this Motion seeking conversion or dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 1112(b)(1) and 1112(b)(4)(F) and (G).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The Debtor in Possession commenced this case on June 26, 2023.

2. On its petition, the Debtor in Possession elected to proceed under Subchapter V of Chapter 11 of the code.

3. The Debtor in Possession is a small business under 11 U.S.C. §§ 1182(2) and 1184.

4. On its petition, the Debtor in Possession listed on Schedule A/B the following assets:

   a. Inventory with the value of $5,000.00.

   b. Five trailers with a scheduled value of $1,000.00.

   c. A "1998 international truck" with a scheduled value of $2,000.00.

   d. Equipment with a combined scheduled value of $25,000.00

   e. Employee retention credit with value of $225,000.00

5. The Debtor in Possession failed to appear at the continued meeting of creditors on August 28, 2023 and September 14, 2023.

6. The Debtor in Possession has not filed its monthly operating report for the period covering the petition date of June 26, 2023 through July 31, 2023.

7. Cause exists under 11 U.S.C. § 1112(b)(1) to convert or dismiss this case. As defined in 11 U.S.C. § 1112(b)(4)(G), cause includes a debtor's failure to attend the meeting of creditors. Cause further exists under 11 U.S.C. § 1112(b)(4)(F), there being an unexcused failure to timely satisfy any filing or reporting requirement established under this Chapter.

8. Conversion to a Chapter 7 is more appropriate remedy because the Debtor in Possession's assets are unencumbered.

Motion, Dckt. 39.

Trustee filed the Declaration of Kristin A. McAbee, Trustee's Bankruptcy Analyst, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 42.

No Opposition

The Debtor in Possession, nor any other party in interest, has not filed an Opposition.

DISCUSSION

Questions of conversion or dismissal must be dealt with through a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Here, the Trustee asserts that cause exists to convert or dismiss under 11 U.S.C. § 1112(b)(1) along with 1112(b)(4)(F) and (G) because the Debtor in Possession has failed to attend the Meeting of Creditors and has not filed its monthly operating reports. A review of the docket indicates that on October 19, 2023, the Debtor in Possession once again failed to appear to the continued Meeting of Creditors, and still has not filed a monthly operating report. The Trustee recommends conversion rather than dismissal because the Debtor in Possession's assets are unencumbered. Motion, Dckt. 39. Alternatively, the Trustee does not object to dismissal of the case if the court determines that such relief is in the best interest of the creditors and the estate. *Id*.

Schedule D of the Debtor in Possession's petition indicates that no creditors have claims secured by the assets of the Bankruptcy Estate. Schedule D, Dckt. 30. Schedule A/B filed in this case lists several assets including, but not limited to, the assets identified by the Trustee in her motion. Schedule A/B, Dckt. 30. These assets would be available to the Chapter 7 Trustee to reach for the benefit of the creditors.

Trustee's arguments are well taken. No party in interest has opposed the Motion. At the status conference on October 19, 2023, the Debtor in Possession reported that there would be no opposition to the Motion to Dismiss or Convert. Minutes, Dckt. 47. Cause exists to dismiss or convert this case pursuant to 11 U.S.C. § 1112(b), and conversion is the more appropriate remedy. The court concurs with the U.S. Trustee that conversion of this case is in the best interests of creditors.

The Motion is granted, and the Chapter 11 Subchapter V case is converted to one under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert or Dismiss the Chapter 11 case filed by the United States Trustee Tracy Hope Davis ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the Chapter 11 Subchapter V case is converted to a proceeding under Chapter 7 of Title 11, United States Code.