

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 23, 2017, at 10:30 a.m.

1. **16-90500-E-11** **ELENA DELGADILLO** **MOTION TO ABANDON**
HSM-4 **Len ReidReynoso** **3-7-17 [119]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 7, 2017. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

After notice and hearing, the court may order the 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(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Irma Edmonds (“Trustee”) requests that the court authorize the Trustee to abandon the Estate’s interest in a lawsuit brought in the names of Elena Delgadillo (“Debtor”) and her co-plaintiff Jesus Cortez, currently pending before the Superior Court of the State of California, County of Alameda, entitled *Delgadillo v. County of Alameda*, Case No. RG14731177 (“Property”). The Property is encumbered by the lien of Sacramento Lopez, securing a claim of \$950,000.00, and apparently growing. The Declaration of Irma Edmonds has been filed in support of the Motion and provides testimony that the value of the Property is outweighed the lien of Sacramento Lopez. Dckt. 121.

The court finds that the Property secures a claim that exceeds 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 Trustee to abandon the Property.

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 Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted and that the Property identified as a lawsuit brought in the names of Elena Delgadillo (“Debtor”) and her co-plaintiff Jesus Cortez, currently pending before the Superior Court of the State of California, County of Alameda, entitled *Delgadillo v. County of Alameda*, Case No. RG14731177 is abandoned to Debtor by this order, with no further act of the Trustee required.

2. [16-90401-E-11](#) **NATIONAL EMERGENCY
WFH-5 MEDICAL SERVICES
David Johnston**

**MOTION FOR COMPENSATION BY
THE LAW OFFICE OF WILKE, FLEURY,
HOFFELT, GOULD & BIRNEY, LLP FOR
DANIEL L. EGAN, TRUSTEES
ATTORNEY(S)
3-2-17 [[144](#)]**

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2017. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney (“Applicant”) for Russell Burbank, the Chapter 11 Trustee (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case regarding National Emergency Medical Services Association, Inc. (“Debtor”).

Fees are requested for the period August 19, 2016, through January 31, 2017. The order of the court approving employment of Applicant was entered on September 12, 2016. Dckt. 85. Applicant requests approval of fees in the amount of \$31,196.00 and costs in the amount of \$619.89.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general administration, asset analysis and recovery, rejection of executory contracts, case administration, and preparing a Motion for Compensation/Employment. The estate has \$87,783.78 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Administration: Applicant spent 5.4 hours in this category. Applicant reviewed monthly operating reports, prepared status conference reports, and attended status conferences.

Asset Analysis and Recovery: Applicant spent 37 hours in this category. Applicant assisted Client in liquidating assets for the benefit of the estate. Applicant negotiated the affiliation agreement with Debtor, prosecuting the motion to obtain court approval of the agreement, and implementing the transition to Debtor. Applicant also recovered a post-petition retainer paid to one of the Debtor’s attorneys.

Rejection of Executory Contracts: Applicant spent 2.8 hours in this category. Applicant assisted Client in rejecting an employment contract between the Debtor and Torren Colcord, the Debtor’s president. Applicant also attend the hearing on the Motion to Reject.

Case Administration: Applicant spent 30 hours in this category. Applicant assisted Client with case evaluation, correspondence and communication with the Debtor’s president, major creditors, and the National Labor Relations Board. Applicant also helped Client in working with the debtor to deal with various unfair labor practice charges filed by the union members.

Motion for Compensation/Employment: Applicant spent 3.6 hours in this category. Applicant prepared and filed Client’s applications to employ and compensate itself, and attended the hearing for approval of these applications.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel Egan, Attorney	71.80	\$395.00	\$28,361.00
	7.0	\$405.00	\$2,835.00
Total Fees For Period of Application			\$31,196.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$619.89 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$354.40
Postage		\$251.09
Diamond Court Reporters		\$14.40
Total Costs Requested in Application		\$619.89

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid 75% of the \$31,196.00 incurred for the Client. First Interim Fees in the amount of \$23,397.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of \$619.89 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Trustee to pay 75% of the fees and 100% of the costs allowed by the court.

Applicant is allowed the following amounts as compensation as a professional in this case:

Fees	\$31,196.00
Costs and Expenses	\$619.89

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, Hoffelt, Gould & Birney, LLP (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Wilke, Fleury, Hoffelt, Gould & Birney, LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke, Fleury, Hoffelt, Gould & Birney, LLP , Professional employed by the Trustee

Fees in the amount of \$31,196.00
Expenses in the amount of \$619.89,

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.

IT IS FURTHER ORDERED that the Trustee is authorized to pay 75% of the fees and all of the expenses allowed from unencumbered monies of the estate in a manner consistent with the payment of administrative expenses in a Chapter 11 case.

3. [16-90401-E-11](#) **NATIONAL EMERGENCY** **MOTION FOR COMPENSATION FOR**
WFH-6 **MEDICAL SERVICES** **BURR PILGER MAYER, INC.,**
 David Johnston **ACCOUNTANT(S)**
 3-2-17 [149]

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2017. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.

Burr Pilger Mayer Inc., the Accountant (“Applicant”) for Russell Burbank, the Chapter 11 Trustee (“Client”), makes a first Interim Request for the Allowance of Fees and Expenses in this case regarding National Emergency Medical Services Association, Inc. (“Debtor”).

Fees are requested for the period August 17, 2016, through January 31, 2017. The order of the court approving employment of Applicant was entered on September 12, 2017. Dckt. 86. Applicant requests fees in the amount of \$17,557.50 and costs in the amount of \$683.24.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general administration, bookkeeping and accounting, invoice and payroll processing, tax compliance, and paying out-of-pocket expenses. The estate has \$87,783.78 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 22.2 hours in this category. Applicant assisted Client with administration of the cases, including but not limited to setting up bank accounts, providing accounting information for status reports and fee applications, and for preparing Monthly Operating Reports to the U.S. Trustee.

Bookkeeping and Accounting: Applicant spent 29.0 hours in this category. Applicant maintained Debtor’s records and books, reconciled the various bank accounts for day to day operations of Debtor’s business, and periodically reported to the Court and to the U.S. Trustee.

Invoice and Payroll Processing: Applicant spent 21.7 hours in this category. Applicant processed payroll and vendor invoices.

Tax Compliance: Applicant spent 17.4 hours in this category. Applicant filed Debtor’s annual State and Federal tax returns and other tax compliance forms as required by law.

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
Andrea Cope, Partner	1.8	\$450.00	\$810.00
Michael Schaffer, Tax Partner	0.5	\$415.00	\$207.50
Elena Serebriakova, Tax Manager	1.0	\$415.00	\$415.00
Jena Lee, Tax Manager	3.0	\$265.00	\$795.00
Stephanie Avakian, Senior Accountant	78.75	\$185.00	\$14,568.75
Samantha Saroff, Staff Accountant	5.25	\$145.00	\$761.25
Total Fees For Period of Application			\$17,557.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$683.24 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Out-of-Pocket Expenses: Surety Bond Fees and Fed Ex Costs		\$683.24
Total Costs Requested in Application		\$683.24

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$17,557.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved, and the Trustee is authorized to pay 75% (\$13,168.13) from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of \$683.24 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 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Trustee to pay 75% of the fees and 100% of the costs allowed by the court.

Applicant is allowed the following amounts as compensation as a professional in this case:

Fees	\$17,557.50
Costs and Expenses	\$683.24

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 Burr Pilger Mayer Inc. (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Burr Pilger Mayer Inc. is allowed the following fees and expenses as a professional of the Estate:

Burr Pilger Mayer Inc., Professional employed by the Trustee

Fees in the amount of \$17,557.50
Expenses in the amount of \$683.24,

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.

IT IS FURTHER ORDERED that the Trustee is authorized to pay 75% of the fees and all of the expenses allowed from unencumbered monies of the estate in a manner consistent with the payment of administrative expenses in a Chapter 11 case.

4. [16-90401](#)-E-11 **NATIONAL EMERGENCY** **MOTION FOR COMPENSATION FOR**
WFH-7 **MEDICAL SERVICES** **RUSSELL K. BURBANK, CHAPTER 11**
 David Johnston **TRUSTEE(S)**
 3-2-17 [[154](#)]

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2017. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion for Allowance of Professional Fees is granted.

Russell Burbank, the Trustee (“Applicant”) for Debtor National Emergency Medical Services Association, Inc. (“Client”), makes a Request for the Allowance of Interim Fees and Expenses in this case

regarding National Emergency Medical Services Association, Inc. (“Debtor”). Fees are requested for the period August 17, 2016, through January 31, 2017.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case planning and administration, court filings and hearings, supervision of operations pre-servicing agreement, negotiation and transition to servicing agreement under The National Association of Government Employees (“Creditor”), supervision of operations post-petition servicing agreement, traveling, and paying reimbursable expenses. The estate has \$87,783.78 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Case Planning and Administration: Applicant spent 13.6 hours in this category. Applicant assisted Client with hiring professionals to assist with the case, taking control of Debtor’s operations from its Executive Director, taking control of Debtor’s cash and other assets, and recovering funds paid to professionals who were not employed by the Court.

Court Filings and Hearings: Applicant spent 14.1 hours in this category. Applicant prepared status reports, made telephonic and personal appearances in court, and reviewed and approved Monthly Operating Reports to the U.S. Trustee.

Supervision of Operations Pre-Servicing Agreement: Applicant spent 17.7 hours in this category. Applicant supervised Debtor's Executive Director and independent contractors. Applicant also reviewed and approved cash disbursements in the ordinary course of business. This included payroll disbursements, liquidating excess office furniture and equipment, and relocating Debtor's headquarters to the administrative manager's home office.

Negotiation of and Transition to Servicing Agreement: Applicant spent 11.3 hours in this category. Applicant reviewed and approved of contract language for the servicing agreement with Creditor. Applicant also addressed concerns and questions from members with respect to the impact of the servicing agreement on members' rights and Debtor's responsibilities.

Supervision of Operations post Servicing Agreement: Applicant spent 1.8 hours in this category. Applicant assisted Client with matters related to the termination of Debtor activities that are being assumed by Creditor under the servicing agreement. Applicant also made sure that member dues were paid to Creditor.

Trustee requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$1,663.67
Calculated Total Compensation	\$7,413.67
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$7,413.67
Less Previously Paid	\$0.00
<u>Total First Interim Fees Requested</u>	\$7,413.67

The fees are computed on the total disbursements by the Trustee totaling \$83,273.38.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$7,413.67 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

In this case, the Chapter 11 Trustee currently has \$87,783.78 of unencumbered monies to be administered. The Chapter 11 Trustee assisted with case planning and administration, court filings and hearings, supervision of operations pre-servicing agreement, negotiation and transition to servicing

agreement under Creditor, supervision of operations post-petition servicing agreement, traveling, and paying reimbursable expenses.

This case required significant work by the Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 11 Trustee.

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

Fees	\$7,413.67
Costs and Expenses	\$309.00

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 Russell Burbank (“Applicant”), the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Russell Burbank, the Chapter 11 Trustee

Fees in the amount of \$7,413.67
Expenses in the amount of \$309.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

Final Ruling: No appearance at the March 23, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 13, 2017. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Allowance of Professional Fees is granted.

James Salven of James E. Salven, CPA, the Accountant (“Applicant”) for Irma Edmonds, the Chapter 7 Trustee (“Client”), makes a first and Final Request for the Allowance of Fees and Expenses in this case. FN.1.

FN.1. Applicant filed the Motion for Allowance of Professional fees and the Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is

not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Fees are requested for the period October 26, 2016, through February 8, 2017. The order of the court approving employment of Applicant was entered on November 1, 2016. Dckt. 67. Applicant requests fees in the amount of \$1,100.00 and costs in the amount of \$270.88.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing an employment application and filing a tax return. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Employment Application: Applicant spent 0.8 hours in this category. Applicant assisted Client with reviewing conflicts and preparing an employment application.

Tax Return: Applicant spent 3.6 hours in this category. Applicant prepared a tax return and subsequent related documents.

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
James Salven, Accountant	4.4	\$250.00	\$1,100.00
Total Fees For Period of Application			\$1,100.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$207.88 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.15	\$36.90
Envelopes Lacerte Tax Proc	\$0.20	\$1.00
First and Final Processing	\$120.96	\$120.96
File and Serve Fee App	\$1.29	\$49.02
Total Costs Requested in Application		\$207.88

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$1,100.00 for its fees incurred for the Client. First and Final Fees and Costs in the amount of \$1,307.88 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$270.88 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$1,100.00
Costs and Expenses	\$270.88

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

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

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

The Motion for Allowance of Fees and Expenses filed by James Salven of James E. Salven, CPA (“Applicant”), Accountant for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that James Salven of James E. Saven, CPA is allowed the following fees and expenses as a professional of the Estate:

James Salven of James E. Salven, CPA, Professional employed by the Trustee

Fees in the amount of \$1,100.00
Expenses in the amount of \$270.88,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.

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

6. [16-90002-E-11](#) **1263 INVESTORS LLC**
[RLC-12](#) **Stephen Reynolds**

**MOTION FOR COMPENSATION FOR
STEPHEN M. REYNOLDS, DEBTORS
ATTORNEY(S)
3-5-17 [\[130\]](#)**

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

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

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

Sufficient Notice Not Provided. No Proof of Service was filed with the Motion. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed \$1,000.00).

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

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

Stephen Reynolds, the Attorney (“Applicant”) for 1263 Investors, LLC, the Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 12, 2016, through February 23, 2017. The order of the court approving employment of Applicant was entered on January 26, 2016. Dckt. 21. Applicant requests fees in the amount of \$15,450.00 and costs in the amount of \$346.66.

INSUFFICIENT NOTICE PROVIDED

No Proof of Service was filed with the Motion. Local Bankruptcy Rule 9014-1(e)(2) & (3) require that a proof of service be filed as a separate document within three days of filing a motion. Without proof that all parties have been served, the court cannot rule on the Motion.

The court's review of the Docket on March 22, 2017, disclosed that no belated Certificate of Service had been filed by Applicant.

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

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PROVIDED THE FOLLOWING ALTERNATIVE RULING IF THE APPLICANT FILES SUFFICIENT PROOF OF SERVICE

U.S. TRUSTEE'S LIMITED OPPOSITION

Tracy Hope Davis, the U.S. Trustee, filed a Limited Opposition on March 9, 2017. Dckt. 134. The U.S. Trustee objects to Applicant's request for fees for local travel time (\$2,010.00).

The U.S. Trustee argues that Applicant's time spent traveling from his office to hearings is local travel time and cites several cases where such travel is not compensated. See *In re Ginji Corp.*, 117 B.R. 983, 994 (Bankr. D. Nev. 1990) ("[T]ravel time to the courthouse beyond a minimal time should be included in overhead"); *In re Metro Transp. Co.*, 78 B.R. 416, 420 (Bankr. E.D. Pa. 1987); *In re Tavern Motor, Inc.*, 69 B.R. 138, 144 (Bankr. D. Vt. 1987) ("While we recognize the reality that a lawyer's time is the lawyer's stock-in-trade, we believe that local travel time is an overhead expense built into a lawyer's hourly rate. Accordingly, it has been this Court's policy not to allow for local travel time under one hour, without a special showing.").

Whether non-local travel time is compensable is undecided. See *In re Thomas*, Nos. CC-08-1307-HMoPa, ND 96-12129-RR, 2009 WL 7751299, at *9 (B.A.P. 9th Cir. 2009) (allowing compensation for non-local travel from San Luis Obispo to Santa Barbara); *In re Pacific Express, Inc.*, 56 B.R. 859, 866 (Bankr. E.D. Cal. 1985) (reducing compensation by more than half for non-local travel from New York and Los Angeles to Sacramento).

The U.S. Trustee cites to additional cases where compensation was limited to half, or less, of an attorney's hourly rate for travel time. See *In re Landing, Inc.*, 122 B.R. 701, 704-05 (Bankr. N.D. Ohio 1990) (reducing fees to half of hourly rate due to unproductiveness of travel but noting that a greater amount could be awarded if the travel time were used for preparing for meetings or court appearances); *In re Environmental Waste Control*, 122 B.R. 341, 347 (Bankr. N.D. Ill. 1990) (reducing travel fees to half); *In re Grimes*, 115 B.R. 639, 643, 647 (Bankr. D.S.D. 1990) (reducing travel fees to 25%).

The U.S. Trustee requests that the court disallow the \$1,110.00 charged for local travel time between Davis and downtown Sacramento, and allow the \$450.00 charged for non-local travel time between Modesto and Davis at fifty percent of Applicant's billing rate.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including communicating with Client regarding the case, filing motions for employment, sale and value, preparation of Monthly Operating Reports, communicating with the U.S. Trustee, negotiating with multiple creditors regarding Plan terms, and preparing Client's plan of reorganization and related matters. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 16.3 hours in this category. Applicant assisted Client with preparation of Motion to Sell and Motion to Value Secured Claim, review of documents and discussions with involved parties regarding short sale.

Case Administration: Applicant spent 12.5 hours in this category. Applicant prepared Motions to Employ Applicant and a realtor. Applicant also reviewed the initial disclosure documents and status conferences. Applicant assisted Client with preparing Monthly Operating Reports.

Creditor Meeting: Applicant spent 12.4 hours in this category. Applicant attended the creditor meeting, and addressed subsequent related correspondences.

Motion for Compensation: Applicant spent 0.4 hours in this category. Applicant prepared this Motion for Compensation.

Plan Statement: Applicant spent 9.9 hours in this category. Applicant negotiated with multiple creditors regarding Plan terms. Applicant also prepared Client’s plan of reorganization and other documents relating to the matter.

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
Stephen Reynolds, Attorney	51.5	\$300.00	\$15,450.00
Total Fees For Period of Application			\$15,450.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses for postage in the amount of \$346.46 pursuant to this application. FN.1.

 FN.1. The court notes that Applicant has miscalculated the total expenses requested in the Motion as \$346.66, instead of \$346.46.

The postage costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Order to File Status report and Attend Status Conference		\$11.77
		\$14.98
Notice of Chapter 11 Bankruptcy Case		\$11.58
Chapter 11 Status Report		\$14.63

Notice of Motion to Value Collateral		\$22.50
Notice of Motion for Sale		\$22.50
Notice of Hearing on Disclosure Statement		\$16.50
Notice of Hearing to Approve Disclosure Statement		\$25.50
Order Approving Disclosure Statement; Ballot; First Amended Plan of Reorganization filed October 9, 2016; First Amended Disclosure Statement filed October 9, 2016		\$153.34
Continued Chapter 11 Status Report		\$16.94
Notice of Motion to Sell Free and Clear of Liens		\$21.78
Amended Notice of Sale		\$14.44
Total Costs Requested in Application		\$346.46

FEES AND COSTS & EXPENSES ALLOWED

Fees

With respect to the travel time, the court's concern arises because of Applicant's charges with respect to four specific courthouse events:

Date and Event	Travel Time Billed as Attorneys' fees and Mileage	Time Billed as Attorneys' Fees for Event at Courthouse
February 2, 2016 Initial Debtor Interview Sacramento Courthouse	Davis to Sacramento, CA 1.5 Hours Travel Time Billed \$450.00 Attorneys' Fees Charged for Travel	Initial Debtor Interview 1.5 Hours Billed \$450 Attorneys' Fees Charged For Event
February 4, 2016 Status Conference Modesto Courthouse	Davis to Modesto California 3.0 Hours Travel Time Billed \$900.00 Attorneys' Fees Charged for Travel	Status Conference 1.0 Hours Billed For Status Conference 1.0 Hours Billed For Preparation for Status Conference \$600 Attorneys' Fees Billed
February 11, 2016 Creditors Meeting Sacramento Courthouse	Davis to Sacramento California 1.0 Hours Travel Time Billed \$300.00 Attorneys' Fees Charged for Travel	Creditors Meeting 0.75 Hours Billed for Creditors Meeting \$225 Attorneys' Fees Charged for Creditors Meeting
February 16, 2017 Confirmation Hearing Sacramento Courthouse	Davis to Sacramento California 1.2 Hours Travel Time Billed \$360.00 Attorneys' Fees Charged for Travel	Confirmation Hearing 0.7 Hours Billed for Preparation 0.5 Hours Billed for Attending Hearing \$360.00 Attorneys' Fees Charged for Confirmation Hearing

In reviewing the above, the court notes that the time billed for the actual hearings is not unreasonable, and actually appears to be less than what one would expect. However, the "pure"

travel time between Davis and Sacramento does not appear reasonable. For the Sacramento events the court determines:

February 2, 2016 Initial Debtor Interview Sacramento Courthouse	Applicant is allowed \$600.00 in attorneys' fees , and the \$300.00 in excess of thereof is disallowed.
February 11, 2016 Creditors Meeting Sacramento Courthouse	Applicant is allowed \$450.00 in attorneys' fees for attending the Creditors Meeting, and the \$75.00 in excess thereof is disallowed.
February 16, 2017 Confirmation Hearing Sacramento Courthouse	Applicant is allowed \$600.00 in attorneys' fees for attending the Confirmation Hearing, and the \$120.00 in excess thereof is disallowed.

For appearing at the Status Conference in the Modesto Courthouse, the court allows Applicant the full five hours of billed time—\$1,500.00. In doing so, the court notes that Applicant has not attempted to bill some excessive charge in excess of a normal billing day. Applicant elected to take a case in the Modesto Division and is expected to properly fulfill his duties in that courthouse within normal billing practices. While not giving Applicant (and other attorneys throughout Northern California a “bonus billing” of awarding full legal fee travel time in excess of a normal billing day, the court does not “handicap” attorneys in the region who take on cases that are not “next door” (like Davis is to Sacramento).

In making this modest adjustment, the court infers that counsel’s “travel time” billing practice has effectively been a sloppy tracking of time for what is actually required for the meetings. It is hard to imagine that an attorney located at 555 Capital Mall or 2150 River Plaza Drive, only short distances from the Sacramento Courthouse, could leave the office, walk or drive a car to the courthouse, go through security, take the elevator to the seventh floor, meet with the client in advance, conduct the initial debtor interview or creditors meeting, confer with the client afterward, egress the courthouse, and then walk or drive back to the nearby office. If Applicant had accurately tracked his time from stepping out of his car at the parking lot across from the courthouse until the time he put his posterior in the seat of his car after the meeting was concluded, it would be in excess of the times that he states were billed for the actual event.

The travel time from Davis to Modesto is reasonable (assuming that Applicant followed the posted speed limits). Presumably, on the drive down and returning Applicant ruminated on the status conference and then what was addressed at the status conference. Applicant’s personal appearance at the first status conference was necessary and appropriate.

The court further notes that Applicant judiciously used telephonic appearances for other hearings, having only one trip to Modesto for which there are attorneys’ fees for the travel time.

Under these circumstances, the court allows Applicant the three hours of travel time at the full \$300.00 per hour rate. If counsel had been “greedy” and tried to bill more than a normal

billing day, the court would have capped the fees and not given more for the additional travel time. Presumably, if there is extensive travel, such counsel is billing on other work and being productive, not believing that he or she could take a case multiple hours away and think that he or she could then bill 8, 9, 12, or 16 hours for attending a one-hour status conference or hearing.

The total disallowed time for counsel is \$195.00.

Though not accepting the reduction advanced by the U.S. Trustee, the court notes that the U.S. Trustee has identified a key issue, not only in this case but other cases throughout the District and Nation.

The total allowed fees are computed as follows:

Total Fees Requested.....	\$15,450.00
Disallowed Travel Fees.....	<u>(\$ 195.00)</u>
Total Allowed Fees.....	\$15,255.00

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Such fees are not surprising for a Chapter 11 case, and the aggregate fees indicate an effective use of Applicant's time and the estate's money for legal expenses.

First and Final Fees in the amount of \$15,255.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator from the available funds of the Plan in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of \$346.46 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator from the available funds of the Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$15,255.00
Costs and Expenses	\$346.46

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

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

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

The Motion for Allowance of Fees and Expenses filed by Stephen Reynolds ("Applicant"), Attorney for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Stephen Reynolds, Professional employed by the Debtor in Possession

Fees in the amount of \$15,255.00
Expenses in the amount of \$346.46,

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

IT IS FURTHER ORDERED that the Plan Administrator is authorized to pay the fees and costs allowed by this Order from the available funds of the Plan in a manner consistent with the order of distribution under the confirmed Plan.

7. [10-91506-E-7](#) NANCY KAMANDA
TPH-3 Thomas Hogan

MOTION TO AVOID LIEN OF THOMAS
LANGER AND CONNIE LANGER
3-8-17 [\[40\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Thomas Langer and Connie Langer ("Creditor") against property of Nancy Kamanda ("Debtor") commonly known as 1520 Ironside Drive, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,680.00. An abstract of judgment was recorded with Stanislaus County on December 2, 2009, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$105,500.00 as of the date of the petition. The unavoidable consensual liens that total \$134,667.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Thomas Langer and Connie Langer, California Superior Court for Stanislaus County Case No. 7-08-SC-030907, recorded on December 2, 2009, Document No. 2009-0115444-00, with the Stanislaus County Recorder, against the real property commonly known as 1520 Ironside Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8.

[16-91014-E-7](#)
ADJ-2

KENNETH/WENDY MILLER
Matthew Olson

MOTION TO COMPEL
3-9-17 [56]

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, parties requesting special notice, and Office of the United States Trustee on March 9, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The hearing on the Motion for Turnover has been continued to 10:30 a.m. on April 13, 2017, by prior order of the court.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6736 Lynch Avenue, Riverbank, California ("Property").

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Kenneth Miller and Wendy Miller (“Debtor”) to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from the Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of the estate from Debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While no opposition has been filed to this Motion by Debtor or any other party in interest, the court notes that Debtor has filed a Motion to Compel Abandonment (and a Reply related to that Motion) in which Debtor asserts that the Property is worth slightly more than its encumbrances, thus making the Property of inconsequential value to the Estate.

The Property is listed on Amended Schedule A as Debtor’s single family home. Dckt. 23. Therefore, when this Chapter 7 case was filed, the Property became property of the Estate, and its possession should be delivered to Movant.

STIPULATION AND CONTINUANCE OF HEARING

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 76. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 79.

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

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

The Motion for Turnover of Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

Trustee moves for the court to extend the deadline for objecting to Debtor's discharge to and through May 8, 2017.

DEBTOR'S FIRST AND SECOND OPPOSITIONS

Debtor filed an Opposition on February 6, 2017, arguing that Federal Rule of Bankruptcy Procedure 4004(b) specifies that a motion to extend deadline requires notice and a hearing. Dckt. 35. Debtor, therefore, objected to the Trustee's request that the Motion be granted ex parte. The Motion was not ruled on ex parte and has proceeded to the scheduled hearing on March 23, 2017. So, Debtor's first Opposition is resolved.

Debtor filed another Opposition on March 9, 2017. Dckt. 62. Debtor argues that the Trustee's request for an extension of time is based upon a flawed belief that Debtor's property is worth more than Debtor says it is worth. Accordingly, Debtor argues that there is no excess equity for Debtor to purchase and that there is no basis to surrender property to the Trustee, negating the two grounds the Trustee cited for the Motion. Debtor cites to *Willms v. Sanderson* for the proposition that a showing of cause to grant a motion to extend deadlines "must be compelling." 723 F.3d 1094, 1104 (9th Cir. 2013) (quotations omitted). Debtor argues that there is no evidence that additional time is needed.

DISCUSSION

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, as long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1). Here, the deadline was February 6, 2017, and the Trustee filed this Motion before that date on February 3, 2017.

As the court has expressed in Debtor's Motion to Compel Abandonment (DCN: MF-2), if there is excess equity in the property that the Trustee is able to recover for the Estate, then Debtor's valuation of the property right now would be incorrect. Therefore, the Trustee's argument that he cannot decide whether to object to Debtor's discharge because Debtor has not decided whether to purchase the excess equity or surrender the property would be compelling. Even now, Debtor has not evidenced any intention to choose either option.

STIPULATION AND CONTINUANCE OF HEARING

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 75. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 78.

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.

and \$243,193.63, for a total of \$323,508.18. The Declaration of Mark Verschelden has been filed in support of the Motion and values the Property at \$425,000.00 as of January 26, 2017, based in part on recent sales of other properties in the area. Dckt. 41; *see also* Appraisal Report, Exhibit A, Dckt. 42.

TRUSTEE'S OPPOSITION

Michael McGranahan, the Chapter 7 Trustee, filed an Opposition on March 9, 2017. Dckt. 52. The Trustee states that he had a real estate broker who has been hired to assist the Estate inspect the interior and exterior of the Property. After speaking with the broker about that inspection, the Trustee believes that he can sell the Property for an amount in the range of \$490,000.00 to \$510,000.00. The Trustee argues that Debtor cannot claim the Property is of inconsequential value to the Estate until the Trustee has solicited offers to purchase the Property.

Bob Brazeal, the Trustee's Broker, filed a declaration on March 9, 2017, in which he explains that at valuing the Property, he chose not to use the average price of recent sales in the Property's subdivision because the sale prices ranged from "very high" to "very low" and because houses in the subdivision are custom homes. Dckt. 54. Instead, Mr. Brazeal appraised the Property's value as if it were in a similar Modesto neighborhood.

DEBTOR'S REPLY

Debtor filed a Reply on March 16, 2017. Dckt. 70. Debtor argues that the Trustee relies upon a faulty opinion of a real estate broker, while Debtor has proved that the Property is of inconsequential value to the Estate. Debtor argues that Mr. Brazeal's valuation is faulty because it does not rely upon recent sales within the Property's subdivision and because it compares the Property to properties in Modesto, which Debtor argues is not the same geographic area as Riverbank. Debtor also asserts that Mr. Brazeal's valuation is unreliable because he has not submitted any supporting evidence for the court's and parties' review. Debtor states that speculation as to a possible sale price for the Property is not sufficient to oppose the Motion.

DISCUSSION

The dispute in this Motion relates to the Property's value. Debtor asserts that the Property is worth \$425,000.00. The Trustee argues that the Property is worth between \$490,000.00 and \$510,000.00. Debtor presented the declaration of an appraiser (and his appraisal report), and the Trustee presented the declaration of a real estate broker.

"Sales of fully encumbered assets are generally improper. In that instance, the trustee's proper function is to abandon the property, not administer it, because the sale would yield no benefit to unsecured creditors." *In re KVN Corp.*, 514 B.R. 1, 6 (B.A.P. 9th Cir. 2014). Abandonment is an exception, however, that "should not be ordered where the benefit of administering the asset exceeds the cost of doing so. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should very rarely be ordered." *Id.* (citing *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 246 (6th Cir. 1987); *Vu v. Kendall (In re Vu)*, 245 B.R. 644, 647-48 (B.A.P. 9th Cir. 2000)).

Here, the Trustee believes that there is consequential equity that can be gathered for the Estate by selling the Property, which is property of the Estate. Debtor believes the Property should be abandoned because its value is almost outweighed by liens, such that any recovery for the Estate would be inconsequential.

STIPULATION AND CONTINUANCE OF HEARING

The parties filed a Stipulation on March 20, 2017, in which they agree to continue the hearing to 10:30 a.m. on April 13, 2017. Dckt. 74. Pursuant to the Stipulation, the court entered an Order continuing the hearing. Dckt. 77.

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 Compel Abandonment filed by Kenneth Miller and Wendy Miller (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Compel Abandonment has been continued to 10:30 a.m. on April 13, 2017, by prior order of the court.

11. [13-91315](#)-E-7 APPLGATE JOHNSTON, INC. MOTION FOR COMPENSATION FOR
WFH-44 George Hollister GRIMBLEBY COLEMAN CPAS, INC.,
ACCOUNTANT(S)
2-23-17 [[756](#)]

Final Ruling: No appearance at the March 23, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Grimbleby Coleman CPAS, Inc., the Accountant (“Applicant”) for Michael McGranahan, the Chapter 7 Trustee (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case regarding Applegate Johnston, Inc. (“Debtor”).

Fees are requested for the period July 18, 2013, through December 31, 2016. The order of the court approving employment of Applicant was entered on September 17, 2013. Dckt. 139. Applicant requests fees in the amount of \$35,459.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing a tax notice, alternative minimum tax forms, a 2009 amended business tax return, a 2010 amended business tax return, a 2012 tax return, a 2013 1120 tax return and Form 1139 carryback claim, 2013 payroll quarterly reports, a 2013 Hawaii payroll report, 2013 year-end payroll forms, and a 2014 1120 tax return and Form 1139 carryback claim. Applicant also assisted with bookkeeping services and Debtor computer access, preference analysis and research, subpoena and related legal matters, reviewing the bankruptcy application, checking for conflicts, and filing this Motion for Compensation. The estate has \$701,554.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

Fees

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

Tax Notice/Alternative Minimum Tax Forms: Applicant spent 5.8 hours in this category. Applicant assisted Client with determining alternative minimum tax issues for Debtor and responded to an Internal Revenue Service Notice regarding the alternative minimum tax forms not previously submitted by Debtor.

2009 Amended Business Tax Return: Applicant spent 3.5 hours in this category. Applicant prepared an amended return for the 2009 tax year.

2010 Amended Business Tax Return: Applicant spent 4.4 hours in this category. Applicant prepared an amended tax return for the 2010 tax year.

2012 Tax Return: Applicant spent 62.7 hours in this category. Applicant prepared 2012 income tax returns including Federal, California, and Hawaii state tax returns by compiling information from Debtor's books.

2013 1120 Tax Return and Form 1139 Carryback Claim: Applicant spent 20.35 hours in this category. Applicant prepared the Form 1120 tax return for the 2013 fiscal year, and analyzed the estate's ability to assert a carryback against prior years' taxes. Applicant also prepared a Form 1139 Net Operating Loss carryback.

2013 Payroll Quarterly Reports: Applicant spent 20.85 hours in this category. Applicant prepared quarterly payroll reports for the Internal Revenue Service and for the State of California for Debtor for the 2013 year.

2013 Hawaii Payroll Report: Applicant spent 3.5 hours in this category. Applicant researched the requirements for filing payroll tax reports in Hawaii, and then prepared required reports for 2013.

2013 Year-end Payroll-Forms w-2/940/de9/944: Applicant spent 6.1 hours in this category. Applicant prepared year-end payroll documents and report for the 2013 fiscal year.

2014 1120 Tax Return and Form 1130 Carryback Claim: Applicant spent 21.2 hours in this category. Applicant prepared the Form 1120 tax return for the 2014 fiscal year, and analyzed the estate's ability to assert a carryback against prior years' taxes. Applicant also prepared a Form 1139 Net Operating Loss carryback.

Bookkeeping Services and Debtor Computer Access: Applicant spent 30.35 hours in this category. Applicant assisted Client in accessing Debtor's computer system and responding to inquiries for documents and information. Applicant also communicated with the Franchise Tax Board, City of Fresno, Hawaii Department of Taxation, and assisted Client in an inquiry from the Department of Labor regarding Debtor's pension program.

Preference Analysis and Research: Applicant spent 21.5 hours in this category. Applicant assisted Client and Client's counsel in retrieving information and reports from Debtor's computer to analyze and prosecute preference recovery actions.

Subpoena and Related Legal Matters: Applicant spent 8.75 hours in this category. Applicant responded to two separate documents and deposition subpoenas from one of the defendants in Client's preference recovery actions.

Review Bankruptcy Application/Check for Conflicts: Applicant spent 5.5 hours in this category. Applicant reviewed conflicts and assisted in preparation of Client's application for authority to employ Applicant.

Motion for Compensation: Applicant spent 3.8 hours in this category. Applicant prepared time records for inclusion in this Motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Applicant's staff includes Jeff Coleman, Debbie Sanders, Donae Carvalho, Kenny Ware, Nathan Miller, Ian Grimbleby, Clive Grimbleby, Colleen Meenk, Daniel Currie, Karen Sanders, Lisa Blanke, and Sue Hugens. However, Applicant has not provided a summary for each professional referenced in the Motion to compute the fees requested for 218.3 hours of work for a total fee of \$35,459.50.

FEES ALLOWED

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 \$35,459.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed the following amounts as compensation as a professional in this case:

Fees	\$35,459.50
------	-------------

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 Grimbleby Coleman CPAS, Inc. (“Applicant”), Accountant for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Grimbleby Coleman CPAS, Inc. is allowed the following fees and expenses as a professional of the Estate:

Grimbleby Coleman CPAS, Inc., Professional employed by the Trustee

Fees in the amount of \$35,459.50,

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.

IT IS FURTHER ORDERED that the Trustee is authorized to pay 75% of the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

12. [13-91315-E-7](#) **APPLEGATE JOHNSTON, INC.** **MOTION FOR COMPENSATION FOR**
WFH-45 **George Hollister** **CAPITOL DIGITAL DOCUMENT**
 SOLUTIONS, LLC, OTHER
 PROFESSIONAL(S)
 2-23-17 [761]

Final Ruling: No appearance at the March 23, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Capitol Digital Document Solutions, LLC, dba Califorensics (“Applicant”), a professional employed for Michael McGranahan, the Chapter 7 Trustee (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case regarding Applegate Johnston, Inc. (“Debtor”).

Fees are requested for the period May 27, 2016, through November 3, 2016. The order of the court approving employment of Applicant was entered on May 2, 2016. Dckt. 631. Applicant requests fees in the amount of \$14,812.50 and costs in the amount of \$425.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including retrieving information in the discovery phase of the preference recovery actions from Debtor’s server. The estate has \$701,554.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant’s statement of total fees and a description of all services provided, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records (Exhibits B–G) to construct billing analysis. While such general reference can often be fatal to a request for professional fees, in light of the modest amount of the bill and that this is an Interim Applicant (with the Trustee and professional able to address it in the final application), the court finds the information adequate for this Motion.

The court allows Capitol Digital Document Solutions, LLC, dba Califorensics \$14,812.50 in fees and \$425.00 in costs (purchases of computer parts) for the period of May 27, 2016, through November 3, 2016. These fees and costs are allowed as interim professional fees and costs pursuant to 11 U.S.C. § 331 and subject to final review and approval pursuant to 11U.S.C. § 330.

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 allows Capitol Digital Document Solutions, LLC, dba Califorensics (“Applicant”), computer professionals for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

motions. According to Section 1.1 of the U.S. Trustee's Guidelines for Region 17, the U.S. Trustee "requests that copies of all notices, reports, papers, and orders filed with the court in Chapter . . . 7 cases . . . be contemporaneously served on the division of the Office of the United States Trustee responsible for supervising the case except the following:

Proofs of claim
Chapter 7 Relief from Stay papers
Chapter 7 Avoidance of Lien papers
Reaffirmation/redemption papers
Discovery"

The court would normally deny this Motion without prejudice to allow the Trustee to cure the service defect, but a review of the docket shows that the issue raised by this Motion is moot anyway.

REVIEW OF MOTION

Irma Edmonds, the Chapter 7 Trustee, alleges that Veladia Aghasi ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Alternatively, if Debtor's case is not dismissed, the Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 12:00 p.m. on March 13, 2017. If Debtor fails to appear at the continued Meeting of Creditors, the Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 3, 2017. Dckt. 25. Debtor's Opposition does not contain any grounds for opposing the Motion and is merely an empty filing to let the court know of Debtor's disapproval.

CONTINUED MEETING OF CREDITORS

The continued Meeting of Creditors was concluded on March 13, 2017. The Trustee's report from the meeting indicates that Debtor appeared, effectively resolving the Trustee's Motion to Dismiss. Debtor having appeared at the Meeting of Creditors, the Motion is denied as moot.

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.

and beneficial to the Estate, and those two costs will be paid out of proceeds from the auction. Auctioneer has agreed to turn over the net proceeds of sale to the Trustee within twenty-one days of the auction.

Lonny Papp, a licensed public auctioneer of Bar None Auction, testifies that he is representing that he agrees to be employed as a disinterested person for the Estate. Lonny Papp testifies he and the firm have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Bar None Auction as auctioneer for the Chapter 7 estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 22. The approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and the Chapter 7 Trustee is authorized to employ Bar None Auction as auctioneer for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 22.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

15. [16-90924-E-7](#) **RUDY/MARCIA MESA** **MOTION TO SELL**
ADJ-3 **Martha Passalacqua** **2-16-17 [25]**

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the personal property commonly known as 1940 Ford Coupe, VIN ending in 0819 (“Property”).

The proposed purchaser of the Property will be determined at an auction scheduled to occur at 4751 Power Inn Road, Sacramento, California, on April 8, 2017. Movant expects the auction to net \$8,875.00 for the Estate based upon a total sale price of \$10,000.00, although the auction will occur without reserve. Expenses before the net amount include an estimated \$125.00 towing expense and a 10% commission to the auctioneer (expected to be \$1,000.00).

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it generates funds to be distributed to claims against the Estate.

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

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

The Motion to Sell Property filed by Michael McGranahan, the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) at auction, the Property commonly known as 1940 Ford Coupe, VIN ending in 0819 (“Property”), on the following terms:

- A. The Property shall be sold with no reserve at auction for an asking price of \$10,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 28, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, towing expenses, and other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Trustee is authorized to pay the auctioneer a commission of 10.00% from the sales proceeds without further order of the court.

16. [17-90124-E-7](#) **ROBERT MCCLAUGHERTY** **MOTION TO AVOID LIEN OF R.**
TPH-1 **Thomas Hogan** **JOSEPH KERENDIAN**
3-7-17 [12]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 7, 2017. By the court’s calculation, 16 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of R. Joseph Kerendian (“Creditor”) against property of Robert McClougherty (“Debtor”) commonly known as 3616 Chant Drive, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,045.97. An abstract of judgment was recorded with Stanislaus County on June 11, 2012, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$415,000.00 as of the date of the petition. The unavoidable consensual liens that total \$239,815.00 as of

the commencement of this case are stated on Debtor's Amended Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is not enough equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided in excess of \$185.00 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of R. Joseph Kerendian, California Superior Court for Los Angeles County Case No. 07K19675, recorded on June 11, 2012, Document No. 2012-0051498-00, with the Stanislaus County Recorder, against the real property commonly known as 3616 Chant Drive, Modesto, California, is avoided for all amounts in excess of \$185.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

17. [16-90830-E-7](#)
WFH-2

BRIAN BETTENCOURT
Elizabeth Berke-Dreyfuss

**MOTION TO COMPROMISE
CONTROVERSY / APPROVE
SETTLEMENT AGREEMENT WITH
WENDEL ROSEN BLACK & DEAN, LLP
3-2-17 [45]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2017. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day 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 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.

Michael McGranahan, the Trustee (“Movant”), requests that the court approve a compromise and settle competing claims and defenses with Debtor’s counsel, Wendel Rosen Black & Dean, LLP (“Settlor”). The claims and disputes to be resolved by the proposed settlement relate to Movant’s questioning of whether Settlor received more than reasonable compensation in bankruptcy cases for Brian Bettencourt (“Debtor”) and his spouse, Carrie Bettencourt.

Movant and Settlor have resolved Movant’s claim, subject to approval by the court, and Settlor shall pay \$6,000.00 in full settlement of Movant’s claim that Settlor may have received more than reasonable compensation.

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 argues that 11 U.S.C. § 329 specifies that the bankruptcy estate can recover funds only if the funds would have been property of the estate otherwise, which limits maximum recovery in this matter to \$11,000.00. Additionally, Movant notes that Settlor did provide valuable services to Debtor, which means that any recovery would be less than \$11,000.00. Finally, considering that a typical Chapter 7 case costs at least \$2,000.00, the Estate's maximum recovery would be \$9,000.00.

Difficulties in Collection

Movant states that Settlor has already delivered the \$6,000.00 in settlement funds.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the settlement resolves the dispute quickly with minimal attorneys' fees expended by the Estate. Movant states that attorneys' fees could exceed \$3,000.00 if the matter subject to litigation.

Paramount Interest of Creditors

Movant states that he is unaware of the wishes of creditors, but he is willing to consider them at the hearing.

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 recovers what arguably would be the maximum that Movant would be able to recover through litigation anyway, and the funds have been delivered to Movant already. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael McGranahan, the Trustee (“Movant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Wendel Rosen Black & Dean, LLP (“Settlor”) is granted, and the respective rights and interests of the parties are settled fully by payment of \$6,000.00 from Settlor to Movant.

18. [14-91633-E-7](#) **SOUZA PROPANE, INC.**
FWP-25 **David Johnston**

**MOTION FOR COMPENSATION BY
THE LAW OFFICE OF FELDERSTEIN,
FITZGERALD, WILLOUGHBY &
PASCUZZI, LLP FOR DONALD W.
FITZGERALD, TRUSTEE'S
ATTORNEY(S)
2-16-17 [[440](#)]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Allowance of Professional Fees is continued to
10:30 a.m. on April 13, 2017.**

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, the Attorney ("Applicant") for David Flemmer, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case regarding Souza Propane, Inc., a California corporation fka Souza Butane-Propane, Inc., a California corporation ("Debtor").

Fees are requested for the period February 5, 2016, through December 31, 2016. The order of the court approving employment of Applicant was entered on February 1, 2015. Dckt. 95. Applicant requests fees in the amount of \$18,408.00 and costs in the amount of \$914.08.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting administrative expense motions, performing asset analysis and recovery, helping with asset disposition, attending the 341 creditor’s meeting, reviewing claims administration and analysis, preparing compromise and settlement motions, attending hearings for conversion to a Chapter 7 case, filing multiple fee applications, handling general case administration, filing an employment application, and reviewing monthly and final reports . The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Administrative Expense Motions: Applicant spent 5.3 hours in this category. Applicant assisted Client with preparing a motion to set a second administrative claims bar date.

Asset Analysis and Recovery: Applicant spent 1.2 hours in this category. Applicant assisted Client with subsequent related correspondence regarding the value of claims versus the Souza individuals. Applicant also worked with Client and Debtor’s counsel regarding Debtor’s receipt of a refund check.

Asset Disposition: Applicant spent 1.0 hours in this category.

Attendance at 341 Creditor’s Meeting: Applicant spent 4.7 hours in this category. Applicant performed extensive review and analysis of questionable pre-petition and post-petition transfers and other records in preparation for the 341 meeting in the converted Chapter 7 case. Applicant also attended the 341 meeting.

Claims Administration and Analysis: Applicant spent 5.9 hours in this category. Applicant reviewed the proofs of claim filed, updated the claims analysis spreadsheets, attended a meeting with Client regarding Chapter 7 claims issues and available funds, performed legal research regarding a setoff of the Lawrence and Judith Souza claim, and drafting subsequent related correspondence to Client.

Compromise and Settlement: Applicant spent 12.9 hours in this category. Applicant negotiated and drafted the settlement agreement between Client and Assim Propane and Gas. Applicant also prepared for and attended a hearing concerning the issue. Furthermore, Applicant engaged in subsequent related correspondence with Client.

Conversion/Dismissal/Trustee: Applicant spent 1.2 hours in this category. Applicant prepared for and telephonically attended the hearing on conversion of the case to a Chapter 7 and engaged in subsequent related correspondence with Client.

Motion for Compensation: Applicant spent 11.7 hours in this category. Applicant prepared the third and final Chapter 11 fee application for Applicant. Applicant also reviewed the Court's tentative ruling on said matter.

General Case Administration: Applicant spent 3.5 hours in this category. Applicant drafted a spreadsheet of post-conversion dates and deadlines, participated in telephone conferences with Client, engaged in subsequent related correspondence with counsel for Lawrence Souza regarding the claim in the relevant case, and worked with Client on issues relating to possible refunds owed to the estate and Client's modified final report.

Other Professional Fee Applications: Applicant spent 4.7 hours in this category. Applicant drafted the second and final Chapter 11 fee application for Client and handled related matters.

Professional Employment Applications: Applicant spent 3.4 hours in this category. Applicant prepared an application to reaffirm Applicant's employment.

Reporting: Applicant spent 0.9 hours in this category. Applicant reviewed and filed Client's final monthly operating report and final Chapter 11 report.

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
Donald Fitzgerald, Attorney	17.0	\$495.00	\$8,415.00

Thomas Willoughby, Attorney	0.3	\$495.00	\$148.50
Jennifer Niemann, Attorney	11.1	\$395.00	\$4,384.50
Karen Widder, Legal Assistant	28.0	\$195.00	\$5,460.00
Total Fees For Period of Application			\$18,408.00

Applicant also requests the approval of \$677.92 for the preparation of this Motion and related matters done after December 31, 2016.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$914.08 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Delivery/Messenger		\$20.90
Document Retrieval		\$0.50
Photocopies	\$0.10	\$588.80
Postage		\$294.70
Hosting Conference Calls		\$9.18
Total Costs Requested in Application		\$914.08

CONTINUANCE OF HEARING

Due to the recent passing of Trustee David Flemmer, and the appointment of Susan Smith in his place, the court continues this matter to afford the new trustee time to review the Motion and file any supplements as she may see fit.

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 Felderstein Fitzgerald Willoughby & Pascuzzi LLP (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on April 13, 2017.

19. [14-91633-E-7](#) **SOUZA PROPANE, INC.** **MOTION FOR COMPENSATION FOR**
FWP-26 **David Johnston** **DAVID D. FLEMMER, CHAPTER 7**
 TRUSTEE
 2-16-17 [447]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2017. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on April 13, 2017.

David Flemmer, the Trustee (“Applicant”) for Debtor Souza Propane, Inc., a California corporation fka Souza Butane-Propane, Inc., a California corporation (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 5, 2016, through January 19, 2017.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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 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 the services provided by Applicant related to the estate enforcing rights and obtaining benefits including negotiating a compromise agreement, preparing and conducting the 341 meeting, preparing Debtor’s final Chapter 11 monthly operating report, reviewing and approving final Chapter 11 fee applications, preparing monthly accounting and bank reconciliations, assembling Debtor’s corporate tax returns for the 2015 tax year, handling a refund check, drafting the final report and notice, producing the claims analysis spreadsheet for the final report, and preparing final distribution checks. The estate has \$181,454.68 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

Applicant has not provided a complete task billing analysis with hourly allotments for each category, instead requesting fees in a total amount for providing services in the case.

Professional Services: Applicant spent 95.95 hours in this category. Applicant assisted Client with negotiating a compromise agreement, preparing and conducting the 341 meeting, preparing Debtor’s final Chapter 11 monthly operating report, reviewing and approving final Chapter 11 fee applications, preparing monthly accounting and bank reconciliations, assembling Debtor’s corporate tax returns for the 2015 tax year, handling a refund check, drafting the final report and notice, producing the claims analysis spreadsheet for the final report, and preparing final distribution checks.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included in the Motion is Applicant’s raw time and billing records, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

Trustee requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$12,199.83
Calculated Total Compensation	\$17,949.83
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$17,949.83
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$17,949.83

The fees are computed on the total disbursements by the Trustee totaling \$293,996.50.

CONTINUANCE OF HEARING

Due to the recent passing of Trustee David Flemmer, and the appointment of Susan Smith in his place, the court continues this matter to afford the new trustee time to review the Motion and file any supplements as she may see fit.

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 David Flemmer (“Applicant”), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on April 13, 2017.

20.	<u>16-90634-E-7</u> <u>16-9018</u> MB-2	LESTER/ANA RODRIGUEZ Mario Blanco	MOTION TO DISMISS ADVERSARY PROCEEDING 1-31-17 <u>[18]</u>
CHAIRES V. RODRIGUEZ ET AL			

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 Plaintiff and Plaintiff’s Attorney on January 31, 2017. By the court’s calculation, 51 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is granted.

Lester Rodriguez and Ana Rodriguez (“Defendant”) move for the court to dismiss Margarita Chairez’s (“Plaintiff”) Complaint (Dckt. 1) and therefore dismiss this adversary proceeding without leave to amend. The grounds stated in the Motion are discussed below.

PLAINTIFF’S OPPOSITION

Plaintiff filed an Opposition on March 9, 2017. Dckt. 26. Plaintiff states the following as support for opposing the Motion:

- A. Plaintiff was employed by Defendant as a cook from December 7, 2011, through March 17, 2013, by oral agreement for \$10.00 per hour.
- B. Plaintiff was not paid properly between April 11, 2012, and March 17, 2013.
- C. Plaintiff entered into an agreement with Defendant by which she would be paid weekly payments to cover the balance due.
- D. Defendant made five payments, totaling \$1,390.75, but no more.
- E. A labor commissioner found that Defendant intentionally failed to pay Plaintiff and awarded a judgment for Plaintiff in the amount of \$5,105.05 in wages, \$2,968.00 in liquidated damages, \$1,800.00 in penalties, and \$378.21 in interest.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

Under the Supreme Court’s formulation of Rule 12(b)(6), a plaintiff cannot “plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Ashcroft v. Iqbal*, 129 S.Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*,

127 S.Ct. 1955, 1964–66 (2007) (“[A] plaintiff’s obligation to provide ‘grounds’ of his ‘entitle[ment]’ to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”).

In ruling on a 12(b)(6) motion to dismiss, the Court may consider “allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprowell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to “accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

REVIEW OF MOTION

The Motion responds to Plaintiff’s claims with the following argumentative grounds:

- A. The complaint and evidentiary record fail to include any facts to support that Defendant knowingly made false representations with intent to deceive Plaintiff.
- B. The complaint includes only one representation, that Defendant told Plaintiff she would be paid for her services.
- C. Because the parties had an employment contract, the presumption is that Defendant represented to Plaintiff that she would be paid.
- D. The record is devoid of any other contemporaneous statements or information to infer that Defendant knew of the falsity of any representations made to Plaintiff.
- E. Defendant made at least five payments to Plaintiff after she quit working, manifesting Defendant’s intent to pay.
- F. Except for the promise to pay wages, no other representations are found in the complaint or anywhere else in the evidentiary record to support a finding that Plaintiff’s choice to continue working despite not being paid was justified.

DISCUSSION

A review of the Complaint in this Adversary Proceeding shows that it fails to plead adequate grounds to establish a claim. Instead, as *Iqbal* and *Twombly* admonish, the Complaint pleads the following formulaic recitation of the elements for the cause of action:

Debtors made false representations to Plaintiff/Creditor that she would be paid for her services; Plaintiff/Creditor relied on the representations of the debtors; Debtors made the false representations knowingly with the intent to deceive the Plaintiff/Creditor, and maliciously and fraudulently did not intend to pay Plaintiff/Creditor for her services.

As Defendant notes in the Motion to Dismiss, the grounds stated are skimpy at best. While the court could infer what it is likely Plaintiff would allege, affording Plaintiff the opportunity to file an amended complaint and say it herself is the better course and consistent with the Federal Rules of Civil Procedure. It may be that Defendant, after having prompted (or awoken) Plaintiff to clearly state the grounds, may be able to clearly address the points—either on a motion for judgment on the pleadings or summary judgment.

Defendant requests that the court bar Plaintiff from filing a first amended complaint. No legal authority is given for such a draconian application of the Federal Rules of Bankruptcy Procedure. The court grants the Motion and dismisses the complaint, and further grants Plaintiff until April 7, 2017, to file and serve an amended complaint. In granting leave to amend, Plaintiff shall provide a “short and plain statement showing the grounds” upon which Plaintiff asserts the right to the relief requested, not merely legal conclusions (such as “Defendant made [nonspecific] misrepresentations”). Fed. R. Civ. P. 8(a)(2); Fed. R. Bankr. P. 7008.

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

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

The Motion to Dismiss All Claims Against Defendant in this Adversary Proceeding filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the Complaint is dismissed as to Defendants Lester Rodriguez and Ana Rodriguez.

IT IS FURTHER ORDERED that Plaintiff Margarita Chairez is given leave to file an amended complaint, with such amended complaint to be filed and served on or before April 7, 2017.

If an amended complaint is not timely served, the Clerk of the Court shall close the file for this Adversary Proceeding, the Original Complaint having been dismissed and there being no amended complaint being prosecuted by Plaintiff.

Final Ruling: No appearance at the March 23, 2017 hearing is required.

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

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

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

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

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

- A. December 19, 2007: Loan of \$324,817.44 to Susan Sundburg evidenced by a Finance Agreement;
- B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);
- C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);

- D. December 31, 2007: Increase of Susan Sundburg's loan to \$385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;
- E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;
- F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;
- G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;
- H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);
- I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to \$324,817.44;
- J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;
- K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;
- L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and
- M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

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

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

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

- B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of \$200.00, with the first payment due on or before February 28, 2017;
- C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;
- D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;
- E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;
- F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;
- G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than \$50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 10%.

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

The parties submitted an Amended Stipulation on February 21, 2017. Dckt. 72. The Amended Stipulation includes the following budget as Exhibit 1:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	\$2,750.00	
	First Mortgage (Jenison)		(\$1,188.67)
	Bank of America AP Payment		(\$200.00)
	Property Taxes		(\$623.88)
	Utilities (Water, Sewer, Garbage)		(\$113.14)

	Repair/Maintenance		(\$500.00)
	NET INCOME	\$124.31	
Personal Property Collateral			
	Lease Income	\$450.00	
	Stearns Leasing (Laser Lease)		(\$244.15)
	Repairs/Maintenance		(\$30.00)
	NET INCOME	\$175.85	
	TOTAL NET INCOME	\$300.16	

APPLICABLE LAW

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

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

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

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

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

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

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 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

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

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

The budget provides a list of income and expenses, but it does not specify which of these expenses are necessary to be paid using cash collateral. Additionally, the attached budget differs from Debtor in Possession's claim regarding how much money is available in total monthly net income. Debtor in Possession states that \$500.16 is available, but the budget shows that \$300.16 is actually available.

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

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

Review of Schedules

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

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

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

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

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

The Motion for Authority to Use Cash Collateral filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, pursuant to this order, for the period April 1, 2017, through July 31, 2017, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	\$2,750.00	
	First Mortgage (Jenison)		(\$1,188.67)
	Bank of America AP Payment		(\$200.00)
	Property Taxes		(\$623.88)
	Utilities (Water, Sewer, Garbage)		(\$113.14)

	Repair/Maintenance		(\$500.00)

	Total Real Property Expense Use		(\$2,625.69)
Personal Property Collateral			
	Lease Income	\$450.00	
	Stearns Leasing (Laser Lease)		(\$244.15)
	Repairs/Maintenance		(\$30.00)

	Total Personal Property Expense Use		(\$274.15)

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

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

IT IS FURTHER ORDERED that the hearing on the Motion is continued to 10:30 a.m. on July 13, 2017, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before, June 29, 2017, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the July 13, 2017 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

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. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to determine whether to order the Trustee to abandon various real property to Debtor, and the hearing will be based upon submitted pleadings as well as oral evidence (presumably argument at the hearing). Based upon the language that the Motion is based on oral evidence, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2).

Sufficient Notice Not Provided. No Proof of Service was filed with the Motion. 14 days' notice is required.

The Motion to Compel Abandonment was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 Compel Abandonment is denied without prejudice.

INSUFFICIENT SERVICE PROVIDED AND ORDER TO SHOW CAUSE UNCURED

No Proof of Service was filed with the Motion. Local Bankruptcy Rule 9014-1(e)(2) & (3) require that a proof of service be filed as a separate document within three days of filing a motion. Without proof that all parties have been served, the court cannot rule on the Motion.

Additionally, the court notes that there is an outstanding Order to Show Cause for failure to pay the \$181.00 filing fee required for this Motion. Therefore, the court denies this Motion without prejudice.

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

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

The Motion to Compel Abandonment filed by Richard Sinclair (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SERVICE OF THE MOTION, FILES A PROOF OF SERVICE, AND PAYS THE REQUIRED \$181.00 FILING FEE FOR THIS MOTION

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

The Motion filed by Richard Sinclair (“Debtor”) requests the court to order the Trustee to abandon property commonly known as 8212 Oak View Drive, Oakdale, California; 22734 Black Hawk Drive, Twain Harte, California; and the Sinclair Ranch Chinese Camp Property, Chinese Camp, California (“Properties”). FN.2. The Oakdale property is encumbered by the lien of Ocwen Loan Servicing, securing a claim of \$760,000.00, according to Debtor’s Declaration. The Declaration of Richard Sinclair has been filed in support of the Motion and values the Oakdale property at \$600,000.00. Debtor has not provided any evidence about the values of the other two properties or of the liens encumbering those properties. Debtor testifies under penalty of perjury that the Twain Harte property is similarly over-encumbered by liens and that the Trustee is “not interested” in the Chinese Camp property. Dckt. 556.

FN.2. Movant is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(c)(l).

TRUSTEE’S NON-OPPOSITION

Gary Farrar, the Chapter 7 Trustee, filed a Non-Opposition on March 6, 2017. Dckt. 586. The Trustee states that none of the real property assets for which Debtor seeks an order compelling abandonment have been scheduled as assets of the bankruptcy estate.

DISCUSSION

The court notes that Deutsche Bank National Trust Company (serviced by Ocwen Loan Servicing, LLC) filed Claim 25 in this case in the amount of \$682,308.59 secured by the Oakdale property. Ocwen Loan Servicing, LLC, as servicer for Deutsche Bank National Trust Company, as trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE2 Mortgage Pass-through Certificates, Series 2007-HE2, also filed Claim 28 for \$157,914.60 secured by the Twain Harte property. No claim has been filed as secured by the Chinese Camp property, and Debtor has not listed an interest in the Chinese Camp property on his Schedules. Similarly, Debtor has not listed an interest in the Twain Harte property. Debtor has listed a twenty-year leasehold interest in the Oakdale property, however. See Schedule A, Dckt. 42, filed December 12, 2014.

The Trustee having stated that the Properties have not been scheduled as assets of the Estate, there is nothing for the court to abandon to Debtor.

The relief requested by Movant is for abandonment of interests that nobody asserts is property of the bankruptcy estate. While the bankruptcy estate could have and may still pursue fraudulent conveyance actions to recover property for the bankruptcy estate, those rights and interests are not the subject of this Motion. The court will not issue an order purporting to authorize an act that the parties show cannot be done—abandoning “assets” that are not property of the bankruptcy estate.

The Motion is denied.

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 Compel Abandonment filed by Richard Sinclair (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied, the 8212 Oak View Drive, Oakdale, California; 22734 Black Hawk Drive, Twain Harte, California; and Sinclair Ranch, Chinese Camp, California, properties not having been scheduled as assets of the bankruptcy estate.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 7 Trustee, creditors, and other such other parties in interest as stated on the Certificate of Service on March 2, 2017. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$181.00 due on February 14, 2017.

The Order to Show Cause is sustained, and the Motion to Compel Abandonment is denied.

Richard Sinclair ("Debtor") filed a Motion to Compel Abandonment of Real Property. Dckt. 554. In that Motion, Debtor seeks to have Gary Farrar, the Chapter 7 Trustee, abandon property consisting of real property commonly known as 8212 Oak View Drive, Oakdale, California; 22734 Black Hawk Drive, Twain Harte, California; and the Sinclair Ranch Chinese Camp Property, Chinese Camp, California. Debtor has not paid the filing fee for that Motion, however.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$181.00.

The Order to Show Cause is sustained, and the Motion to Compel Abandonment is denied. The court has also denied the Motion on its merits by separate order.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, and the Motion to Compel Abandonment filed by Richard Sinclair, the Chapter 7 Debtor, (DCN: None Stated), Dckt. 554, is denied.

24. [08-92474-E-7](#) **DARLENE BLAN**
SCB-7 Steven Altman

**MOTION FOR COMPENSATION BY
THE LAW OFFICE OF
SCHNEWEIS-COE & BAKKEN, LLP
FOR LORIS L. BAKKEN, TRUSTEE'S
ATTORNEY(S)
2-8-17 [77]**

Final Ruling: No appearance at the March 23, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on February 8, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case regarding Darlene Blan ("Debtor").

Fees are requested for the period April 27, 2016, through February 1, 2017. The order of the court approving employment of Applicant was entered on May 12, 2016. Dckt. 39. Applicant requests fees in the amount of \$3,570.00 and costs in the amount of \$127.87.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including assisting with general case administration, reopening this case, employing special counsel, asserting an objection to Debtor's exemption in the lawsuit, and settlement of the lawsuit and of the dispute with Debtor regarding her exemption in the lawsuit. The estate has \$7,500.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 4.9 hours in this category. Applicant assisted Client with preparing a fee agreement and employment application, reviewing deadlines to object to exemptions, preparing stipulations to extend deadlines to object to exemptions, and preparing the instant application for compensation.

Motion to Reopen: Applicant spent 1.1 hours in this category. Applicant prepared the motion to reopen this case.

Employment of Special Counsel: Applicant spent 11.0 hours in this category. Applicant contacted counsel to represent Debtor in prosecuting Debtor's claim for personal injuries and medical expenses she incurred. Applicant then filed a Motion to Employ and Motion for Compensation for special counsel.

Objection to Exemption: Applicant spent 5.4 hours in this category. Applicant entered into negotiations with Debtor's counsel regarding the Debtor's dispute. Applicant then prepared the settlement agreement for the parties in dispute.

Settlement and Motion to Compromise: Applicant spent 6.5 hours in this category. Applicant prepared a Motion to Compromise and appeared by telephone at the subsequent hearing.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Applicant's staff includes Lorin Bakken, a partner, and Audrey Dutra, a paralegal. However, Applicant provided only the raw data used to compute the fees requested for 28.9 hours of work for a total fee of \$3,570.00, instead of breaking out what each person contributed.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$127.87 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$47.97
Copying	\$0.10	\$79.90
Total Costs Requested in Application		\$127.87

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$3,570.00 for its fees incurred for the Client. First and Final Fees and Costs in the amount of \$3,697.87 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$127.87 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$3,570.00
Costs and Expenses	\$127.87

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

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

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

The Motion for Allowance of Fees and Expenses filed by Schneweis-Coe & Bakken, LLP (“Applicant”), Attorney for the Trustee having been presented to the

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

IT IS ORDERED that Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional employed by the Trustee

Fees in the amount of \$3,570.00

Expenses in the amount of \$127.87,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.

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