

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

April 16, 2015 at 10:30 a.m.

1. [14-90108-E-7](#) MARLENE RODRIGUEZ  
ADJ-3

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF FLORES AND MACKO  
FOR ANTHONY D. JOHNSON,  
TRUSTEES ATTORNEY(S)  
3-4-15 [[39](#)]

**Final Ruling: No appearance at the April 16, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 4, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Anthony D. Johnston, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 25, 2014 through March 3, 2015. The order of the court approving employment of Applicant was entered on August 26, 2014, Dckt. 35. Applicant requests fees in the amount of \$800.00.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

April 16, 2015 at 10:30 a.m.

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Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as

opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including legal services necessary to assist the Trustee in administration of the instance case. Performed services in connection with the preferential payment to Barclays Bank, writing a demand letter, preparation of a complaint to set aside the preference, and research. This work totaled 3.9 hours of work at \$250.00 an hour for a total of \$975.00. The attorney agreed to reduce the fee request to \$800.00. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.6 hours in this category. Applicant pursued what appeared to be a preferential payment to Barclays Bank by filing a demand letter and a complaint to set aside the preference. Since Barclays was in Delaware applicant conducted research on venue to determine likelihood of obtaining the money.

Significant Motions and Other Contested Matters: Applicant spent 2.3 hours in this category. Applicant prepared the instant motion and supporting documents along with the motion to employ.

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

<b>Services Provided</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Anthony Johnston	3.9	\$250.00	\$975.00



2. [15-90109-E-11](#) NATIONAL EMERGENCY  
UST-1 MEDICAL SERVICES

MOTION FOR ORDER DESIGNATING  
TORREN COLCORD AS DEBTOR'S  
REPRESENTATIVE  
3-18-15 [[29](#)]

**Final Ruling:** No appearance at the April 16, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on March 18, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Order Designating Torren Colcord as Debtor's Representative has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Order Designating Torren Colcord as Debtor's Representative is granted.**

Tracy Hope Davis, the United States Trustee, filed the instant Motion for Order Designating Torren Colcord as Debtor's Representative on March 18, 2015. Dckt. 29. The Motion seeks to have the court designate Torren Colcord as National Emergency Medical Services Association's ("Debtor") representative in this case.

The UST states that Ms. Colcord is the Debtor's Executive Director. Ms. Colcord signed the Chapter 11 petition as the Executive Director.

The Debtor filed a Certificate of Resolution which authorized Kimberley Cuaresma to act in the absence of Ms. Colcord. Dckt. 22. Ms. Cuaresma appeared with Debtor's counsel at the continued Initial Debtor Interview and continued 341 meeting. At the continued 341 meeting, the UST alleges that Ms. Cuaresma's sworn testimony affirmed that Ms. Cuaresma has no authority or decision-making power over the Debtor.

The UST asserts that Ms. Cuaresma does not have sufficient control over the Debtor to act as its representative and that the proper representative would be Ms. Colcord.

Pursuant to Fed. R. Bankr. P. 9001(5), a debtor is defined as:

(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: **(A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control;** (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(emphasis added).

The UST is seeking an order which designates Ms. Colcord, as the Executive Director of the Debtor, as the representative of the Debtor.

The court finds that Ms. Colcord is the proper representative of the Debtor, pursuant to Fed. R. Bankr. P. 9001(5). Ms. Colcord, in her position as Executive Director, as the requisite decision making authority to be "in control" of the Debtor.

Therefore, the court designates Torren Colcord as the Debtor's representative in place of Kimberley Cuaresma pursuant to Fed. R. Bankr. P. 9001(5).

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 Order Designating Torren Colcord as Debtor's Representative having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Torren Colcord is designated as the Debtor's representative in place of Kimberley Cuaresma pursuant to Federal Rule of Bankruptcy Procedure 9001(5).

3. [11-93923-E-7](#)      **CHERIE KHAN**  
HCS-3                      **Christian J. Younger**

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF  
HERUM/CRABTREE/SUNTAG FOR DANA  
A. SUNTAG, TRUSTEES ATTORNEY(S)  
3-19-15 [35]**

**Final Ruling: No appearance at the April 16, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 19, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Herum/Crabtree/Suntag, the Attorneys ("Applicant") for Gary R. Farrar the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 24, 2012 through January 26, 2015. The order of the court approving employment of Applicant was entered on March 6, 2013, Dckt. 20. Applicant requests fees in the reduced amount of \$14,000.00 and costs in the amount of \$284.97.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

- (A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

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

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

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

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general legal case administration (\$1,429.50), Investigation of real property and advice to Trustee on foreclosure (\$1,437.50), and sale of promissory note (\$11,828.50). The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 7.70 hours in this category. Applicant assisted Client with reviewing bankruptcy schedules, general communication with the client and interested parties, and court appearances. Additionally, prepared and filed the instant fee application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 12.90 hours in this category. Applicant investigated the real property at issue and advised the Trustee on potential foreclosure on deed of trust. The applicant communicated and met with several interested parties, prepared demand letters, reviewed the loan documents and payment history on the property, and prepared the motion to sell property of the estate.

Sale of Promissory Note: Applicant spent 45.10 hours in this category. Applicant communicated and met with the client and several interested parties. Applicant prepared letter to buyer regarding return funds, reviewed legal issues regarding the sale of the note, and drafted and revised the motion to sell. Furthermore, drafted the assignment of deed of trust and promissory note.

The fees calculated below are only for the hours actually charged for. The above hourly totals are the amount of time worked, but some of the time worked was not charged to the client.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Dana A. Sntag	7.3	\$325.00	\$2,372.50

Loris L. Bakken	16.9	\$295.00	\$4,985.50
Josh Stevens	4.5	\$250.00	\$1,125.00
Richardo Z. Aranda	12.8	\$225.00	\$2,880.00
Patrick Larson	2.2	\$195.00	\$429.00
Wendy A. Locke	11.7	\$225.00	\$2,632.50
Audrey Dutra (paralegal)	3	\$90.00	\$270.00
<b>Total Fees For Period of Application</b>			<b>\$14,695.50</b>

**FEES AND COSTS & EXPENSES ALLOWED**

Applicant seeks to be paid a single sum of \$14,000.00 for its fees and expenses incurred for the Client.

As to the costs, Applicant is seeking \$82.40 in court call costs. Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support.

No information has been provided to the court by Applicant that the court call costs were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in addition to the professional fees requested as compensation. The court call service is typically for the sole benefit of the Applicant and not in furtherance of representing the Client. Therefore, because the Applicant does not provide explanation on why the court he court disallows \$82.40 of the requested costs.

Here, the Applicant is requesting a single sum of \$14,000.00 for its fees and expenses. Given the fact that the court is disallowing some costs, the court is construing the single request as a voluntary reduction in fees while full reimbursement of the allowed costs. Therefore, the court construes the breakdown of the \$14,000.00 as such:

Fees	\$13,862.73
Costs and Expenses	\$137.27

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees and Costs in the amount of \$14,000.00 pursuant to 11 U.S.C. § 331 and 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.

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

Fees	\$13,862.73
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Costs and Expenses

\$137.27

pursuant to this Application as first and final fees pursuant to 11 U.S.C. § 331 and 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 Herum/Crabtree/Suntag ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Herum/Crabtree/Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum/Crabtree/Suntag, Professional Employed by Trustee

Fees in the amount of \$13,862.73

Costs and Expenses in the amount of \$137.27

**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.

4. [11-92632-E-7](#) STACEY STEWART  
CWC-4

MOTION FOR COMPENSATION FOR  
CARL S. COLLINS, TRUSTEE'S  
ATTORNEY  
3-17-15 [[37](#)]

**Final Ruling: No appearance at the April 16, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 30 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Carl Collins, the Attorney ("Applicant") for Stephen Ferlmann the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 8, 2013 through January 28, 2015. The order of the court approving employment of Applicant was entered on July 23, 2013, Dckt. 19. Applicant requests fees in the amount of \$4,631.00 and costs in the amount of \$88.73.

**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;

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(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including. The estate has \$13,926.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **FEES 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's Paralegal spent 0.20 hours in this category. Applicant's Paralegal reviewed emails from Trustee advising no preferential or fraudulent transfers existed in the case.

Efforts to Assess and Recover Property of the Estate: Applicant spent 9.6 hours in this category and Applicant's Paralegal spent 0.20 hours in this category. Applicant conducted communications with the Trustee and investigated the financial affairs of the Debtor regarding identification and review of potential assets of the Bankruptcy Estate. Applicant also assisted Client with preparation of statement of financial affairs, schedules, list of contracts, US Trustee interim statements and operating reports.

Significant Motions and Other Contested Matters: Applicant spent 5.00 hours in this category and Applicant's Paralegal spent 3.20 hours in this category. Applicant prepared and filed an application and obtained a court order authorizing the Trustee to employ Applicant and Pinnacle Real Estate Group, as well as prepared and filed a fee application to compensate the Trustee's Counsel.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Applicant	14.6	\$295.00	\$4,307.00
Claudia Alarcon, Paralegal	3.60	\$90.00	\$324.00
Melissa Morena, Paralegal	0.00	\$90.00	\$0.00

	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$4,631.00

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$88.73 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$33.80
Postage	\$2.30	\$2.30
Postage	\$2.30	\$2.30
Postage	\$2.76	\$2.76
Postage	\$5.28	\$5.28
Postage	\$19.54	\$19.54
Postage	\$22.75	\$22.75
<b>Total Costs Requested in Application</b>		<b>\$88.73</b>

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

##### **Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$4,631.00 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 and Expenses**

The Finals Costs in the amount of \$88.73 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	\$4,631.00
Costs and Expenses	\$ 88.73

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 Carl Collins ("Applicant"), Attorney for 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 Carl Collins is allowed the following fees and expenses as a professional of the Estate:

Carl Collins, Professional Employed by Trustee  
Fees in the amount of \$ 4,631.00  
Expenses in the amount of \$ 88.73,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of #4,631.00 and costs of \$88.73 are approved as final fees and costs 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 7 case.

5. [10-92342-E-7](#) PATRICIA FALLOW  
SSA-2

AMENDED MOTION FOR COMPENSATION  
FOR STEVEN S. ALTMAN, TRUSTEE'S  
ATTORNEY  
3-13-15 [[130](#)]

**Final Ruling: No appearance at the April 16, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 34 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Steven S. Altman, the Attorney ("Applicant") for Michael McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period April 25, 2014 through April 16, 2015. The order of the court approving employment of Applicant was entered on May 21, 2014, Dckt. 120. Applicant requests the reduced fees and expenses in the amount of \$1,158.54.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case and preparation of application in support of employment, case discussion concerning conversion from chapter 13 to 7, and preparation of the instant fee application. Totaling an amount of \$1,658.54. The estate has \$4,905.65 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES 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 1.70 hours in this category. Applicant assisted Client with preparation of motion to employ, discussion of converting the case from chapter 13 to chapter 7, general communication with client.

Efforts to Assess and Recover Property of the Estate: Applicant spent .20 hours in this category. Applicant evaluated what would happen to the property vestments in a Chapter 7 following a conversion and reviewed the Trustee's motion requesting approval of sale of personal property back to debtor.

Significant Motions and Other Contested Matters: Applicant spent 3.5 hours in this category. Applicant drafted and filed the motion to employ as well as the instant motion for compensation.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Steven S. Altman	5.40	\$300.00	\$1,620.00
<b>Total Fees For Period of Application</b>			\$1,620.00

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$38.54 pursuant to this applicant.





**STIPULATION**

On March 16, 2015, the Debtor and Michael McGranahan, the Chapter 7 Trustee, filed a stipulation in connection with the instant Objection. Dckt. 49. The stipulation states:

Based upon the foregoing, the Trustee and Debtor have agreed that the Trustee may deposit the proposed payment of claimant John Dobbs, in the principal amount of \$11,288.25, with the Clerk of the Superior Court of Stanislaus County in the above referenced case, subject to being disbursed only upon a final judgment in the subject case in favor of plaintiff John Dobbs.

Dckt. 49, paragraph 4.

**DISCUSSION**

A review of the Trustee’s Final Report shows that the disbursement for the allowed general unsecured claims is as follows:

Claim No.	Claimant	Allowed Amount of Claim	Interim Payments to Date	Proposed Payment
1	FRANCHISE TAX BOARD	\$0.00	\$0.00	\$0.00
2	CITY OF MODESTO	\$292.81	\$0.00	\$4.05
3	JOHN DOBBS	\$815,740.22	\$0.00	\$11,288.25

Dckt. 35.

Pursuant to the proposed disbursement, the City of Modesto would only receive \$4.05 of its \$292.81 claim while John Dobbs would receive \$11,288.25.

As the Debtor argues, the claim of John Dobbs is currently being litigated in the Superior Court of Stanislaus County awaiting trail. The stipulation between the Debtor and the Trustee allows for the \$11,288.25 distribution proposed to John Dobbs to be held by the Clerk of the Superior Court of Stanislaus County until a final judgment is entered in the case. It is if John Dobbs prevails that the \$11,288.25 would be disbursed to Mr. Dobbs. If not, it is presumed that the money would be released the Debtor.

It is in the scenario that John Dobbs does not prevail that the court is concerned. The City of Modesto is only being paid a 1.4% dividend on its full \$292.81 claim. If the proposed settlement is approved as currently stated, the Debtor may receive a windfall of \$288.76 which would have gone to the City of Modesto to pay its claim in full if not for the pending litigation.

If the court were to approve a stipulation as proposed, the terms would need to provide for the City of Modesto’s claim to be in full. The court imagines that, in order to prevent any question proper disbursement, the Debtor

could cover the \$288.76 difference to pay the City of Modesto's claim, which then would allow for the Clerk of the Superior Court of Stanislaus County to hold the \$11,288.25 in disbursements in full pending final judgment in the state court case. This way, regardless of the outcome, the City of Modesto would not be penalized due to the pending litigation and John Dobbs would not prematurely receive a distribution while the trial is being litigated.

Therefore, if the Debtor and Trustee consent to the City of Modesto's claim being paid in full, the court would approve the stipulation, providing that the Clerk of the Superior Court of Stanislaus County to hold the \$11,288.25 in disbursements in full pending final judgment in the state court case.

At the hearing, -----

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

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

The Objection to Trustee's Final Report, filed in this case by Central Auto Recovery Services, Inc., 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 Objection to Trustee's Final Report is ~~xxxxxxx~~



the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The Debtor, along with the instant Objection, filed an Objection to the Trustee's Final Report, objecting to the Trustee's proposed distribution to Creditor prior to the underlying litigation being resolved.

Seeing that the basis of the claim is still pending final judgment in the Superior Court of Stanislaus County, the court stays any further action in connection with Proof of Claim No. 3 pending final judgment and adjudication as to the rights and liabilities of the parties in the underlying state court action, Superior Court of Stanislaus County, case no. 675077.

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

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

The Objection to Claim of John Dobbs, Creditor filed in this case by Central Auto Recovery Services, Inc., 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 all proceedings in connection with the Objection to Proof of Claim Number 3 of John Dobbs **are stayed, pending further order of this court.**

The Clerk of the Court may close the file in this case when all other matters have been concluded.

8. [14-91052-E-7](#) DEREK SAWYER  
HSM-3

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF HEFNER, STARK AND  
MAROIS, LLP FOR AARON AVERY,  
TRUSTEE'S ATTORNEY(S)  
3-26-15 [[53](#)]

**Tentative Ruling:** The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).**

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 26, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

**The Motion for Allowance of Professional Fees is granted.**

Hefner, Stark & Marois, LLP the law firm ("Applicant") for Gary Farrar the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 12, 2014 through April 16, 2015. The order of the court approving employment of Applicant was entered on November 24, 2014, Dckt. 34. Applicant requests fees in the amount of \$5,820.00 and costs in the amount of \$94.00.

## STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work

in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including asset investigation, asset disposition, and general case administration. In connection with the services rendered by Applicant, the Trustee has recovered \$15,000.00 of monies for the estate. Motion and Declarations, Dckts. 53, 55 and 56. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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

##### **Fees**

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

General Case Administration: Applicant spent 6.30 hours (1.5 at no charge) in this category. Applicant assisted Client with advised Trustee on general case matter, drafted employment application, and compensation application.

Asset Investigation: Applicant spent 1.7 hours in this category. Applicant review of assets and background materials relating to the assets, and the post nuptial agreement between debtor and non-debtor spouse.

Asset Disposition: Applicant spent 14.4 hours (1.5 at no charge) in this category. Applicant negotiated with the debtor for purchase of assets, advised Trustee of estate's potential community property interests, and drafted agreement for sale of estate's assets.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Aaron A. Avery	19.40	\$300.00	\$5,820.00
Aaron A. Avery	3.00	\$0.00	\$0.00
<b>Total Fees For Period of Application</b>			\$5,820.00

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$94.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		\$64.00
Telephonic Appearance		\$30.00
<b>Total Costs Requested in Application</b>		<b>\$94.00</b>

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include \$30.00 in telephonic appearance. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in addition to the professional fees requested as compensation.

Additionally, the Applicant fails to provide the amount of copies or the rate in which Applicant charges. The court awards a maximum of \$0.10 per page for copies. The Applicant unfortunately does not provide for the number of copies nor the rate charged. Without more, the court cannot blindly award expenses without the specifics of the billing.

Therefore, the court disallows \$30.00 of the requested costs.

**FEEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,820.00 pursuant to 11 U.S.C. § 331 and 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 and Expenses**

The First and Final Costs are disallowed in their entirety due to Applicant's failure to provide evidence of the rate per copy and explanation for the telephonic court appearance.

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

Fees	\$5,820.00
Costs and Expenses	\$0.00

pursuant to this Application as First and Final fees pursuant to 11 U.S.C. § 331 and 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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Hefner, Stark, & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark, & Marois, LLP, Professional Employed by Trustee  
Fees in the amount of \$5,820.00

**IT IS FURTHER ORDERED** that the costs of \$94.00 are not allowed by the court.

The Fees and Costs pursuant to this Applicant are approved as final fees and costs 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 7.

**Tentative Ruling:** The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 26, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

**The Motion to Sell Free and Clear of Liens is granted.**

The Bankruptcy Code permits The Civic Plaza, LLC, Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the "Property" described as follows:

- A. 1727 N Street, Merced, California, APN 031-131-007-000

The proposed purchaser of the Property is Lupe Martin and Alfredo Martin and the terms of the sale are:



The Motion to Sell Property filed by The Civic Plaza, LLC 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 Civic Plaza, LLC, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Lupe Martin and Alfredo Martin or nominee ("Buyer"), the Property commonly known as [Street Address, California/description of personal property]("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$1,200,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 149, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. All proceeds, after payment of the debts secured by liens, expenses of sale, and other costs as provided in the Purchase Agreement, shall be deposited by the Debtor in Possession into a blocked account, from which no monies shall be disbursed except upon further order of the court.

**IT IS FURTHER ORDERED** that within three business days after close of escrow, the Debtor in Possession shall file with the court and serve on the U.S. Trustee, Sacramento Division, a Notice of Deposit of Monies in Blocked Account, which is verified under penalty of perjury by John-Pierre Mendoza, representative of the Debtor in Possession, to which a copy of the account card for the blocked account (redacted as appropriate) and the deposit slip or confirmation of deposit, is attached.

10. [14-91565-E-11](#) RICHARD SINCLAIR

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-30-15 [[131](#)]

**Final Ruling: No appearance at the April 16, 2015 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Richard Carroll Sinclair ("Debtor"), Trustee, and other parties in interest on March 30, 2015. The court computes that 17 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 (\$429.00 due on March 24, 2015).

**The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.**

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

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

Final Ruling: No appearance at the April 16, 2015 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Trustee Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 Trustee Fees is granted.**

Irma Edmonds ("Applicant"), the Chapter 7 Trustee for the bankruptcy estate of Cleo V. Paugh ("Debtor"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 14, 2012 through October 7, 2014. The order of the court approving employment of Applicant was entered on March 14, 2012, through the notice of appointment of interim trustee Dckt. 2. Applicant requests fees in the amount of \$18,045.40 and costs in the amount of \$282.70.

#### **STATUTORY BASIS FOR TRUSTEE FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits income from sale of properties. The estate has \$21,552.89 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

#### **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 44.5 hours in this category. Applicant assisted Client with reviewing and updating files.

Efforts to Assess and Recover Property of the Estate: Applicant spent 6.5 hours in this category. Applicant researched asset value changes.

Adversary Proceedings: Applicant spent 4.5 hours in this category. Applicant reviewed oppositions and stipulations.

Significant Motions and Other Contested Matters: Applicant spent 4.0 hours in this category. Applicant approving accountant compensation and compiling distributions.

#### **Computation of Fees Permitted Under 11 U.S.C. § 327**

The reasonable fees allowed a trustee cannot exceed the maximum provided in 11 U.S.C. § 326(a). In the Motion, Applicant states that the fees requested are \$18,045.40. The Motion does not include a statement showing how such amount is asserted to be within the maximum amount permitted pursuant to 11

U.S.C. § 326(a). Applicant provide her original (Dckt. 157) and supplemental (Dckt. 160) declarations in support of the Motion. Both state that the maximum amount of compensation permitted pursuant to 11 U.S.C. § 326(a). Neither declaration provides a computation of the fees as sought by Applicant. The Supplemental Declaration states that Supplemental Exhibit C (Dckt. 161) is “[a] document I generated from my bankruptcy software program setting forth the cap calculation, which the Trustee is requesting.” The declarations do not purport to provide a simple calculation by the Applicant of the amount which she has computed as the maximum to which she may be allowed as trustee. FN.1.

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 FN.1. The inability of a trustee to prepare a simple spread sheet calculation of the maximum trustee fees which he or she may seek is concerning to the court. For trustees who handle bankruptcy estates of hundreds of thousands, if not millions, of dollars, being able to prepare and provide testimony under penalty of perjury as to how the maximum fees should properly be computed is not an unreasonable expectation of the court. Merely stating that, “a computer program generated a number, so judge just put it in an order” is not sufficient, or credible.

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 Exhibit C provided by Applicant is inconsistent with the amount requested in the Motion. The “computer computation” shows that the maximum trustee’s fees in this case are \$16,967.76. The court computes the court computes the maximum trustee’s fees based on the information provided by the Trustee, as follows:

Percentage Applied to Distribution Portion	Total Disbursements Other than to Debtor	Distribution Portion Amount Subject to Percentage	Computation of Trustee’s Fee For Distribution Portion
	\$274,355.11		
25%		\$5,000.00	\$1,250.00
10%		\$45,000.00	\$4,500.00
5%		\$224,355.11	\$11,217.76
3%		\$0.00	\$0.00
		-----	
	Total to Which Percentage Applied	\$274,355.11	
			-----

		Maximum Trustee's Fees Computed With 11 U.S.C. § 326(a) Percentages	\$16,967.76
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It appears that the request in the Motion for fees of \$18,045 is a typographical error.

In reviewing who and what has been disbursed by the Trustee, Applicant's Exhibit D discloses,

Attorney for Trustee.....(\$25,290.49)  
 Accountant for Trustee.....(\$ 2,635.50)  
 Real Estate Agent for Trustee.....(\$18,600.00)  
 Escrow Expenses.....(\$ 1,689.00)  
 Insurance Expenses.....(\$ 320.00)  
 Surety Expenses.....(\$ 180.14)

Applicant's testimony about what was required of her as Trustee consists of the following:

- A. "I performed normal trustee's duties including: opening the case and entering it into the trustee's case management software system, reviewing the petition and related schedules, reviewing mail, reviewing case with attorney, preparing and conducting the 341 examination of debtor, preparing and filing Form I, 2, and as required by the U.S. Trustee for successive six month periods, examining proofs of claims to eliminate duplication and to identify those claims that may be in addition to or in different amounts from claims listed on the debtor's schedules, preparing monthly bank reconciliations and proper accounting of all assets and disbursements made, preparing final accounting and maintaining a proper bond." Declaration ¶ 4, Dckt. 160.
- B. "The additional work in this case involved facilitating the liquidation of real property and recovery of secured monies due and owing from almond crops from previous years from Blue Diamond Growers. The primary activities included the following:
  - a. Review of employment and management of counsel, accountant and realtor.
  - b. Negotiating the sale of debtors real property located at 2331 Edsel Lane in Modesto, California in the amount of \$310,000.00. This resulted in a net of \$105,977.20 for the estate for administrative expenses and unsecured creditors after the satisfaction of all secured and lien creditors.
  - c. Filing of 2012 Federal and State Fiduciary Tax returns on behalf of the estate.
  - d. Reviewing notice of applications to employ the realtor, accountant and my attorney.

e. Reviewing and approval of all documents regarding the sale prepared by counsel, the realtor, the title company and other parties. Discuss the bankruptcy process with purchaser in court, following appearance at hearing of sale.

f. Preparation and filing of Trustee's Final Report, Notice of Final Report, Amended Trustee's Final Report, Amended Notice of Final Report and provision for filing of Trustee's Distribution Report.

g. Distribution of funds per order." ¶ 6, *Id.*

The judges in this District review requests for trustee's fees, utilizing the 11 U.S.C. § 326 maximum fees, as a determination of the "commission" for trustee's who have to handle good cases, bad cases, and the truly ugly cases. See *In re Scoggins*, 517 B.R. 206 (Bankr. E.D. Cal. 206 2014). In doing this, the court also give due regard to the requirement that even a "commission" computation result in reasonable trustee's fees. 11 U.S.C. § 326(a) "reasonable compensation" not to exceed the percentage limits.

In reviewing the Trustee's declaration outlining all of the "additional" or "extraordinary" work done that she wants the court to consider in approving trustee fees at the maximum, the "extraordinary" activities consist of talking with the professionals who are being paid \$48,715.13 for their services relating to selling the property and resolving the dispute. If the court's consideration were to stop with the explanation and evidence offered by the Applicant, the fees allowed would be significantly less than the \$16,967.76 maximum in this case.

While this bankruptcy case did not require the Applicant to run a business or actively work at corraling assets, it did require her active participation in resolving the Starineri Family Trust dispute. Debtor commenced this bankruptcy case in pro se. On Schedule D she listed only the Starineri Family Trust as having the one secured claim in this case. Dckt. 24. On Schedule F she listed only one \$1,900 unsecured claim. *Id.*

While one would question the wisdom of filing a Chapter 7 case with no significant creditors and a one party dispute, that was the Debtor's choice. Essentially, Debtor chose to turn all of the rights and property of the estate for a Chapter 7 Trustee to advance, rather than doing it herself, setting up a trust with a trustee of her choice, or giving a power of attorney to someone she trusted. While the Debtor had the right to do so, that does not mean that the Debtor has the right to free or discounted services.

The Chapter 7 Trustee has addressed and adjudicated rights and issues of the estate for three years. She appropriately engaged professionals to advance the interests of the estate. A trustee fee of \$16,967.76 averages to fees of \$5,655.92 a year (\$471.00 a month). It is not unreasonable compensation of \$471.00 a month for managing this case and advocating the rights of the estate for these past three years.

### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in

the amount of \$282.70 pursuant to this applicant. The costs are not itemized in the Motion. The costs are not itemized in the Applicant's declaration. The costs are not itemized in the Applicant's "Timesheet Report" (Dckt. 158). The costs are not itemized on Applicant's Amended Trustee's Final Report (Ex. B, Dckt. 161). The costs are not itemized on the Trustee's Proposed Re-Distribution (Ex. D, Dckt. 163).

The court has no idea of what comprises costs in the amount of \$282.70. The court cannot, and the court will not, authorize the payment of monies to professionals merely because they say they should be paid.

The final fees in the amount of \$16,967.76 and no costs pursuant to 11 U.S.C. § 330 and 11 U.S.C. § 326(a) 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.

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 Irma C. Edmonds ("Applicant"), 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 Irma C. Edmonds is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$16,967.76  
Expenses in the amount of \$ 0.00

**IT IS FURTHER ORDERED** that all other fees and costs are not allowed by the court.

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$16,967.76 and no costs pursuant to 11 U.S.C. §326(a) and 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 7 case.

12. [14-91596-E-7](#) TIMOTHY BROWN  
MDM-1

CONTINUED MOTION TO EXTEND  
DEADLINE TO FILE A COMPLAINT  
OBJECTING TO DISCHARGE OF THE  
DEBTOR  
2-18-15 [[52](#)]

**Final Ruling:** No appearance at the April 16, 2015 hearing is required.  
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The case having previously been converted to a Chapter 7 and the deadline to file a complaint objecting to discharge of the Debtor being reset to June 29, 2015, the Motion is dismissed 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.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been converted the a Chapter 7 and the objection to discharge date in that case is June 29, 2015, which is after the date requested in the Motion.