

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 18, 2019 at 10:30 a.m.

1. [18-90909-E-7](#) CYNTHIA DARIO-GOOD MOTION TO REDEEM
[RKW-3](#) Randall Walton 3-21-19 [24]

**APPEARANCE OF RANDALL WALTON REQUIRE
FOR THE HEARING ON APRIL 18, 2019**

TELEPHONIC APPEARANCE PERMITTED

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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 21, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 Redeem is denied without prejudice. However, the court issues an order authorizing the Debtor and On Deck Capital, Inc. to enter into a consensual release of lien.

Cynthia Y. Dario-Good (“Debtor”) seeks to redeem personal property used in Debtor’s pottery business identified as office equipment, ceramics and paint (“Property”) from the claim of On Deck Capital, Inc. (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor’s exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Cynthia Y. Dario-Good. Debtor states she and Creditor agreed to a redemption value of \$5,000.00. Declaration, Dckt. 24 at 2:1-3. No value is stated as to the Property.

Debtor claims an exemption of \$15,225.00 in the Property pursuant to California Code of Civil Procedure § 703.140(b)(5).

Additionally, Debtor states the court issued an Order abandoning the Property on February 19, 2019. Dckt. 18. At the hearing on Debtor’s Motion to Abandon the Property, the court found the Property had a value of \$25,700.00. Civil Minutes, Dckt. 16.

Creditor has not filed a Proof of Claim in this case. This being a “no asset case” (Trustee’s Report of No Distribution, February 2, 2019 Docket Entry Report), no proof of claim being filed is not unexpected.

On Schedule E/F, Debtor lists “Ondeck/Swift Financial, LLC” as a creditor holding an unsecured claim in the amount of \$18,537.45. Schedule E/F, Dckt. 1.

In the Motion to Abandon, Debtor only identified the claim of Aaron and Stacy Woodill as securing a claim against the Property in the amount of \$5,722.87. Declaration, Dckt. 11; Schedule D, Dckt. 1.

DECISION

Based on the evidence presented, the court cannot determine if the correct creditor has been identified in the Motion, or whether there are multiple creditor’s with claims secured by the Property.

The Motion to Redeem conflicts with Schedule E/F in which Debtor states under penalty of perjury that “Ondeck/Swift Financial” has an unsecured claim. Dckt. 1 at 28. On Schedule D Debtor states under penalty of perjury that Aaron & Stacy Woodill have a secured claim, for which the collateral is described as “Business Purchase Loan.” *Id.* at 22. This purports to state that a loan is collateral securing the claim of the Woodills.

In her Declaration, Debtor’s testimony under penalty of perjury includes the following affirmative statements:

- A. “The Creditor, On Deck Capital, Inc., has agreed to settle this debt for \$5,000 payable within sixty (60) days from the date of the Order granting this motion.” Dec. ¶ 2, Dckt. 26.
- B. “The debt is secured by business property (no real property) listed in my schedules. A true and correct copy of the UCC Financing Statement is attached as Exhibit ‘1.’” *Id.* ¶ 3.

The UCC Financing Statement filed as Exhibit “1” names Cynthia Good as the debtor and “Financial Agent Services” as the secured party. Dckt. 27. The collateral is stated only as “All assets now owned or hereafter acquired and wherever located.” *Id.* On its face, the “collateral” securing the claim is not merely “business assets.”

On Schedule A/B Debtor lists the following personal property assets:

1.	Household Goods and Furnishings.....	\$ 2,500
2.	Clothing.....	\$ 500
3.	Jewelry.....	\$ 2,000
4.	Deposit Accounts.....	\$ 2,980
5.	Annuity.....	\$130,000
6.	Office Equipment.....	\$ 700
7.	Ceramics and Paint.....	\$ 25,000

Dckt. 1 at 13-17.

Debtor has not provided the court with a copy of the security agreement which is the grant of a security interest in personal property of the Debtor. Cal. Com. C. § 91010(74). Rather, Debtor has merely provided an “all assets” UCC-1 Financing Statement.

The Motion fails to state a value asserted as to the Property and the court cannot determine “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption,” which is required by 11 U.S.C. § 722.

Debtor has filed the present Motion seeking to tell the court there is some agreement between Creditor and Debtor for Creditor’s claim to be \$5,000.00. However, no agreement has been provided to the court.

On face value from the Schedules, the “value” of the personal property listed as Office Equipment, Ceramics, and Paint are well in excess of the \$5,000 number that the Debtor wants. The court does not have evidence to order On Deck Capital, Inc., if it is the creditor with a lien on that property, to take \$5,000 in satisfaction of its secured claim. An order authorizing the redemption is one that forces a creditor to take the specified amount notwithstanding a larger obligation being owed.

The court denies without prejudice the Motion to Redeem.

The court will also order that the Debtor and On Deck Capital, Inc. are authorized to enter into a consensual transaction whereby On Deck Capital, Inc. releases its lien on all personal property of the Debtor in exchange for the Debtor paying not more than the total sum of \$5,000.00 to On Deck Capital, Inc..

The court does this to assuage concern that such consensual transaction might be viewed as a violation of the discharge injunction and allow the parties to immediately consummate such lien release rather than the filing of a new motion.

The court shall issue an order in 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 Redeem filed by Cynthia Y. Dario-Good (“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 is denied without prejudice.

IT IS FURTHER ORDERED that Cynthia Y. Dario-Good, the Chapter 7 Debtor, (“Debtor”) and On Deck Capital, Inc., the purported holder of a perfected personal property security interest on assets of the Debtor, are authorized to enter into a consensual transaction whereby On Deck Capital, Inc. releases its lien on all personal property of the Debtor in exchange for the Debtor paying not more than the total sum of \$5,000.00 (inclusive of all fees, charges or any other amounts) to On Deck Capital, Inc..

2. [09-90311-E-7](#)
[SSA-5](#)

BRIAN/PATTY CARROLL
G. Michael Williams

**MOTION TO COMPROMISE CLAIMS
AND/OR MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PATTY CARROLL
O.S.T.
3-20-19 [114]**

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 Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, Chapter 7 Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

At the hearing **XXXXXXXXXXXXXXXXXXXX**

The Motion for Approval of Compromise *is granted*.

Michael D. McGranahan, the Chapter 7 Trustee, ("Trustee" or "Movant") requests that the court approve a compromise and settle competing claims and defenses. The Motion is a bit confusing in that it states the Trustee seeks authorization that:

(b) Subject to bankruptcy court approval, the bankruptcy estate on behalf of Debtors and Debtor Patricia Carroll shall be authorized to resolve the Claims in the Gross Settlement.

Motion ¶ 5(b), Dckt. 114.

The above request appears to state that the two Debtors hold the claims to be settled and that the bankruptcy estate is to be the agent for the two Debtors and to settle the claims for and in the name of the Debtors - not the Trustee administering claims which are assets of the bankruptcy estate.

As requested, the court would not be authorizing the Trustee to settle claims of the Bankruptcy Estate, but only be an agent for the two Debtors for claims that the Debtors have which are not property of the Bankruptcy Estate.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**

Under the terms of the Settlement, claims of the Debtor against Defendant in the litigation resolved by the settlement, subject to approval by the court, are on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibits 1-3 in support of the Motion, Dckt. 129):

- A. Defendant shall pay to \$240,000.00, which funds are currently held in a Qualified Settlement Fund trust by the District Court for Hardin County, Texas 356th Judicial District.
- B. The Settlement Fund Trustee shall pay the fees, costs, and expenses under the settlement terms, including court ordered MDL assessment costs of \$12,000.00, general case expenses of \$379, administrative costs of \$612, and case specific expenses of \$2,039.32.
- C. Subject to bankruptcy court approval, attorney fees of \$45,200.00 shall be paid each to the Noble firm and the Tailstock, Watkin, Kris & Overshoots, PLLC firm.
- D. The projected net disbursement to the Trustee from the settlement are stated to be \$226,100.00, from which the Trustee will pay the attorney's fees and costs.
- E. It is anticipated that the net proceeds received by the bankruptcy estate will be \$133,769.68.
- F. The \$133,769.68 in proceeds shall be disbursed as follows: (1) \$35,000 to the bankruptcy estate and \$97,769.68 to the Debtor.
- G. Debtor and Trustee agree to a complete and general release and covenant not to sue Defendant as well as other related parties.

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.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released.

Probability of Success

Movant argues this factor supports settlement because the protracted litigation costs “could consume hundreds of thousands of dollars if not millions.”

Movant misunderstands this factor. The expense of litigation is another, separate factor under *Woodson*. Here, the inquiry is the likelihood of success if Debtor pursues the claim on the merits.

Movant states that special counsel is confident a causal link would be established between defective medical product and Debtor’s injuries. No difficulties in the case being asserted, it appears the probability of success is high.

Difficulties in Collection

Movant renames this factor “difficulties to be encountered in this litigation,” and proceeds to advise the court that the Settlement resolves contentious litigation, recovers funds for the Debtor and Estate, and avoids costly, protracted litigation.

What this factor actually solicits is whether there would be any difficulty in collecting on any successful judgment received after the claim is pursued on the merits. Based on the cause of action, and no difficulty alleged by Movant, the court finds that there is unlikely to be any difficulty in collection here after a final decision on the merits is achieved.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues here the litigation would be complex and expensive, requiring significant expert medical testimony, and a rigorous fight over proximate cause of Debtor’s damages.

The court agrees that the personal injury claims here (described in detail in Debtor's Declaration (Dckt. 116)) would result in expensive litigation involving significant medical expert testimony. Therefore, this factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues that, as trustee, the settlement is fair and reasonable in his business judgment. Movant notes that this bankruptcy case was filed and Debtor received a discharge in 2009, a decade ago. As a part of the settlement, the Estate will receive funds of \$35,000.00.

Movant's argument is well taken. The litigation being resolved by this Settlement has been protracted, and recovery in the event Debtor's claims are not settled would likely be long off and diminished in value. This factor also weighs in favor of settlement.

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 resolves the demonstrably contentious and protracted litigation, providing significant recovery for the Debtor and Estate. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between ~~joint-debtor, Patty Carroll ("Debtor") and an unidentified (due to the confidential nature of the proposed settlement) defendant ("Defendant") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibits 1-3 in support of the Motion (Dckt. 129).~~

3. [09-90311-E-7](#)
[SSA-6](#)

BRIAN/PATTY CARROLL
G. Michael Williams

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF MCINTYRE LAW P.C.
FOR NOBLE MCINTYRE, SPECIAL
COUNSEL(S) AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF AYLSTOCK, WITKIN, KREIS &
OVERHOLTZ PLLC FOR JUSTIN
WITKIN, SPECIAL COUNSEL(S) O.S.T.
3-20-19 [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.

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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2019. ^{FN.1.} By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

FN.1. On March 29, 2019 Chapter 7 Trustee filed a Notice of Errata, which states that the Notice of Hearing provided the address 1200 I Street, Suite 4, Modesto, California, where the correct courtroom address is actually 1200 I Street, 2nd Floor, Modesto, California. Dckt. 133. Based on the Notice of Errata filed, and the error being minor, the court does not find any party was prejudiced.

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.

McIntyre Law P.C. and co-counsel Aylstock, Witkin, Kreis & Overholtz PLLC, the Special Counsel (“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.

Fees are requested for the period August 22, 2003, through the present Fee Application. The order of the court approving employment of Applicant was entered on January 21, 2019. Dckt. 93. Applicant requests fees in the amount of \$91,200.00 and costs in the amount of \$2,039.32.

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 Applicant’s services for the Estate include representation in state court litigation based on Debtor’s personal injury and product liability claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to pursue Debtor’s personal injury and product liability claims, for which Client agreed to a contingent fee of 40% of the gross recovery. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). \$240,000.00 of gross monies recovered for Client.

Based on the fee agreement, Applicant seeks \$91,200.00 in fees.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,039.32 pursuant to this application.

In the Motion, Applicant states with particularity (FED. R. BANKR. P. 9013) the following:

Copies of the itemized costs disbursements for [Applicant] are reflected in Exhibits 1 and 2 filed with the present Application.

Motion, Dckt. 119 at 2:26-27.

The Federal Rules of Bankruptcy Procedure require a movant to state with particularity *in the motion* the grounds for relief.

Here, Applicant has essentially handed the court a treasure map in hopes the court might end up at the right conclusion. The court generally declines the opportunity to embark on such a treasure hunt, sifting through the pleadings to assemble the grounds for movants.

In light of the context of costs (incurred by special counsel in state court litigation) and the modest amount, the court has gone through to find the itemization. However, counsel is reminded that failure to state grounds within the motion is cause to deny the requested relief.

The costs requested in this Application are,

Description of Cost	Cost
Copy Charges	\$0.60
Court Costs/Filing Fees	\$700.00
Legal Research	\$400.10
Medical Record Retrieval	\$598.09
Medical Record Review	\$22.40
Postage Charges	\$7.84
Tort-Related Miscellaneous	\$10.29
Primary Counsel General Expense	\$300.00
Total Costs Requested in Application	\$2,039.32

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$91,200.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

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 online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include legal research, tort-related

“miscellaneous expenses,” and “general expenses.” 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 charged in addition to the professional fees requested as compensation. The court disallows \$710.39 of the requested costs.

Request for Administrative Expense

In the Motion, Applicant requests, in passing, that the fees and costs awarded be treated as an administrative expense pursuant to 11 U.S.C. § 503. However, no grounds were stated in support of this request.

Additionally, this is actually a separate request for relief that would normally be brought pursuant to separate motion.

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

The request for additional relief is denied without prejudice.

Ruling

First and Final Costs in the amount of \$1,328.93 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	\$91,200.00
Costs and Expenses	\$1,328.93

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

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

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

The Motion for Allowance of Fees and Expenses filed by McIntyre Law P.C. and co-counsel Aylstock, Witkin, Kreis & Overholtz PLLC (“Applicant”), Special Counsel for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”)

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

IT IS ORDERED that McIntyre Law P.C. and co-counsel Aylstock, Witkin, Kreis & Overholtz PLLC are allowed the following fees and expenses as a professional of the Estate:

McIntyre Law P.C., a Professional employed by the Chapter 7 Trustee

Fees in the amount of \$45,600.00,
Expenses in the amount of \$313.56,

Aylstock, Witkin, Kreis & Overholtz PLLC, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$45,600.00,
Expenses in the amount of \$1,015.37,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the costs of \$710.39 are not allowed by the court.

IT IS FURTHER ORDERED that the Chapter 7 Trustee s authorized to pay the fees and costs 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.

No other additional or further relief is granted.

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's, Debtor's Attorney, Chapter 7 Trustee, Chapter 7 Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by Michael D. McGranahan ("the Chapter 7 Trustee") requests that the court authorize him to abandon joint-debtor, Patty Carroll's ("Debtor"), personal injury and product liability claims ("State Court Claims") against "doe 2."

The Declaration of Michael D. McGranahan has been filed in support of the Motion and provides testimony that the estimated net value of the State Court Claims is \$12,500.00.

The court finds that the cost of pursuing the claims exceeds the value thereof, and there are negative financial consequences for the Estate if it retains the State Court Claims. The court determines that the State Court Claims are of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the State Court Claims.

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 Michael D. McGranahan (“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 Compel Abandonment is granted, and joint-debtor, Patty Carroll’s (“Debtor”), personal injury and product liability claims (“State Court Claims”) against “doe 2” are abandoned to Brian and Patty Carroll by this order, with no further act of the Chapter 7 Trustee required.

5. [13-91492-E-7](#)
[JCK-3](#)

KELLEY COVEY
Gregory Smith

**MOTION TO AVOID LIEN OF
NATIONAL CREDIT ACCEPTANCE,
INC.**
3-18-19 [30]

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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 18, 2019. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of National Credit Acceptance, Inc. (“Creditor”) against property of Kelley A. Covey (“Debtor”) commonly known as 3224 Tehama Court, Modesto, California (“Property”).

Debtor states judgment was entered against Debtor in favor of Creditor in the amount of \$12,612.38, recorded in Stanislaus County on February 3, 2009, that encumbers the Property. Declaration

¶ 5, Dckt. 32. Debtor states further that a second abstract was recorded on February 5, 2019, in the amount of \$24,453.15. *Id.*, ¶ 7.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$204,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$218,577.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$0.00 on Amended Schedule C. Dckt. 19.

DISCUSSION

While most of the necessary information to grant the Motion was provided by the Debtor, two issues stand out.

First, The Amended Schedule C does not claim any exemption in the Property. 11 U.S.C. § 522(f) allows Debtor to avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption. With no exemption claimed, there is no exemption to impair.

Second, no copy of the Abstract Judgment has been filed as an Exhibit in support of the Motion. The Docket shows that only a Motion, Notice of Hearing, and Declaration have been filed. Dckts. 30, 31, 32. The Motion makes reference to an Exhibit A, but no such exhibit has been filed as required by Local Bankruptcy Rule 9004-2 and 9014-1(d)4), which require that the motion, notice, points and authorities, each declaration, and the exhibits be filed as separate pleadings.

The Declaration makes no reference to authenticating any exhibits. Dckt. 32. Authentication of such exhibits is required as provided in Federal Rules of Evidence 901 et seq.

Without that authenticated document, the court does not know the identifying information of the recorded judgment, including the case and recording numbers.

Based on the foregoing, the Motion is denied without prejudice.

An 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 Kelly A. Covey ("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 is denied without prejudice.

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

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

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

The court set the hearing for April 9, 2019 at 10:00 a.m.. Order, Dckt. 168. The Order required service by overnight delivery. *Id.* The Proof of Service indicates service was made on the 20 largest unsecured creditors, parties requesting special notice, parties in interest, and Office of the U.S. Trustee on April 4, 2019 by Federal Express delivery and email. Dckt. 173.

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

-----.

The interim Second Omnibus Motion To Assume Executory Contracts is granted.

Mike Tamana Freight Lines, LLC, as the Debtor in Possession, filed this emergency Motion seeking retroactive approval for the cure of arrearage and assumption of executory contracts pursuant to 11 U.S.C. §§ 105 and 365, and Federal Rule of Bankruptcy Procedure 6006.

Debtor in Possession has numerous executory contracts for freight delivery services both directly and through third party carriers. Brokering third party delivery contracts generates approximately \$100,000.00 weekly in gross revenue. Declaration ¶ 5, Dckt. 165.

Debtor in Possession states payment since filing on executory contracts has been withheld, and argues the is problematic because:

1. The unpaid carriers are ceasing to do business with the Debtor in Possession despite assurances of prompt payment for future shipments.

2. The carriers are proceeding to collect unpaid amounts directly from the Debtor in Possession's customers, causing those customers to cease to do business with the Debtor in Possession either through carriers or directly.
3. Debtor in Possession's broker's license depends upon a bond being maintained with the Department of Transportation. The carriers have filed, severally, 18 claims against the Debtor in Possession's bond, which could therefore be cancelled as early as March 23, 2019.

Motion ¶¶ 9-11, Dckt. 163.

Debtor in Possession provides the following list of executory contracts, and respective agreement execution dates and arrearages owing:

<u>Counterparty</u>	<u>Contract Identifier</u>	<u>Arrears</u>
24/7 Transport & Storage, Inc.	Transportation Brokerage Agreement dated April 4, 2018	\$1,700.00
Bluestar Trucking LLC	Transportation Brokerage Agreement dated November 10, 2016 (note contract purports to be dated in 2011, which is an error)	\$3,750.00
M and V Trucking	Transportation Brokerage Agreement dated September 21, 2017	\$8,509.00
PA Logistics Inc.	(execution date unknown)	\$1,700.00
Reliance Intermodal Inc.	(execution date unknown)	\$850.00
Speed Haulier Inc.	(execution date unknown)	\$1,350.00
Stream Logistics	Transportation Brokerage Agreement dated October 15, 2018 (note contract purports to be dated in 2011, which is an error)	\$3,250.00
TOTAL		\$21,109.00

Retroactive Approval

On March 25, 2019 Debtor in Possession filed the First Omnibus Motion To Assume Executory Contracts (Dckt. 116) which was granted on an interim basis and set for further hearing. Order, Dckt. 150. The Interim Order authorized the Debtor in Possession to conditionally assume and in its discretion make interim cure payments. Order, Dckt. 150.

Debtor in Possession states that the executory contracts subject of this Motion were, due to error, omitted from the First Omnibus Motion. However, believing they had been included, Debtor in Possession already paid the cure amounts for the aforementioned executory contracts.

Debtor in Possession argues that the court has the power to grant retroactive approval, that Debtor in Possession has substantially complied with 11 U.S.C. § 365 and is acting in good faith, and that the circumstances here support retroactive approval where funds used were for an appropriate purpose. Motion ¶ 21, Dckt. 163.

The Declaration of Amanjot Singh Tamana was filed in support of the Motion. Declaration, Dckt. 165. Tamana testifies he is the “responsible individual” for Debtor in Possession, that he believed the executory contracts subject to this Motion were already approved in the Interim Order granting the First Omnibus Motion, and that stopping payments already made would cause great inconvenience and expense to the Estate. *Id.*, ¶¶ 1, 15.

Cure of Arrearages

The Motion seeks retroactive authorization to pay \$21,109.00 to cure arrearages pursuant to 11 U.S.C. § 365(b). Debtor in Possession states the cure amount has been included in the revised cash collateral budget.

Review of Agreements

Debtor in Possession states the numerous carrier executory contracts (“Agreements”) are identical. Debtor in Possession summarizes the essential terms as follows:

- a. The carrier agrees to timely ship goods as may be required by the Debtor (Agreement, § 3(a)); and
- b. The Debtor agrees to pay the carrier within thirty (30) days of receipt of the carrier's invoice (Agreement, § 2(d)).

The complete terms of the agreements are provided in full in the respective agreements, filed as Exhibits 1-5, Dckt. 166.

APRIL 9, 2019 HEARING

At the April 9, 2019 hearing the Debtor in Possession reported that the interim authorization is sought to be retroactive because the Debtor in Possession thought, in error, that these contracts were included in the prior request to assume executory contracts. Civil Minutes, Dckt. 189.

The court issued an Interim Order granting the Motion, authorizing the \$21,209.00 cure payment for the assumption of the Executory Agreements. Order, Dckt. 193. The court set the final hearing on the Second Omnibus Motion To Assume Executory Contracts for 10:30 a.m. on April 18, 2019. *Id.*

APPLICABLE LAW

A debtor in possession, subject to the court’s approval, may assume or reject any executory contract or unexpired lease. 11 U.S.C. §§ 365, 1107.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Additionally, where the executory contracts are in default, the debtor in possession must (1) cure or provide adequate assurance of prompt cure for the default(s), (2) compensate or provide adequate assurance of prompt compensation for pecuniary loss resulting from default, and (3) provide adequate assurance of future performance under such contract or lease. 11 U.S.C. § 365(b).

DISCUSSION

Here, as with the First Omnibus Motion, Debtor in Possession has demonstrated several sound business judgment reasons for assuming the executory contracts, including the continuation and preservation of Debtor in Possession’s business which is at the heart of this reorganization.

Additionally, Debtor in Possession has provided testimony that the cash collateral funds have already (due to mistake) been applied to cure the arrearages on the Agreements, and that a revised cash collateral budget accounts for these expenditures.

No supplemental pleadings have been filed since the prior hearing on the Motion.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Second Omnibus Motion To Assume Executory Contracts filed by Mike Tamana Freight Lines, LLC (“Debtor in Possession”) having been presented

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

IT IS ORDERED that the interim Second Omnibus Motion To Assume Executory Contracts is **XXXXXXXXXXXXXXXXXX**.

7. [19-90122-E-11](#) **MIKE TAMANA FREIGHT** **MOTION TO ASSUME LEASE OR**
[MF-14](#) **LINES, LLC** **EXECUTORY CONTRACT**
 Reno Fernandez **4-4-19 [175]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 4, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Third Omnibus Motion to Assume Executory Contract is **XXXXX.**

Mike Tamana Freight Lines, LLC, as the Debtor in Possession, filed this Third Omnibus Motion seeking approval for the cure of arrearage and assumption of executory contracts pursuant to 11 U.S.C. §§ 105 and 365, and Federal Rule of Bankruptcy Procedure 6006.

Debtor in Possession has numerous executory contracts for freight delivery services both directly and through third party carriers. Brokering third party delivery contracts generates approximately \$100,000.00 weekly in gross revenue. Declaration ¶ 5, Dckt. 178.

Debtor in Possession states payment since filing on executory contracts has been withheld, and argues the is problematic because:

1. The unpaid carriers are ceasing to do business with the Debtor in Possession despite assurances of prompt payment for future shipments.
2. The carriers are proceeding to collect unpaid amounts directly from the Debtor in Possession’s customers, causing those customers to cease to do business with the Debtor in Possession either through carriers or directly.
3. Debtor in Possession’s broker's license depends upon a bond being maintained with the Department of Transportation. The carriers have filed, severally, 18 claims against the Debtor in Possession’s bond, which could therefore be cancelled as early as March 23, 2019.

Motion ¶¶ 9-11, Dckt. 175.

Debtor in Possession provides the following list of executory contracts, and respective agreement execution dates and arrearages owing:

<u>Counterparty</u>	<u>Contract Identifier</u>	<u>Arrears</u>
ADJ Transportation	Transportation Brokerage Agreement dated January 1, 2019 (note contract purports to be dated in 2011, which is an error)	\$106.51
All American Trucking J.W.	Transportation Brokerage Agreement dated June 15, 2018 (note contract purports to be dated in 2011, which is an error)	\$1,350.00
Ark Transport, Inc.	Transportation Brokerage Agreement dated March 8, 2018 (note contract purports to be dated in 2011, which is an error)	\$800.00
Deol Trucking	Transportation Brokerage Agreement dated April 9, 2015	\$1,400.00

Kang Transport LLC	Transportation Brokerage Agreement dated May 2, 2015	\$3,697.00
KMP Transport, Inc.	Transportation Brokerage Agreement dated September 9, 2015	\$13,000.00
Kooner Trucking	Transportation Brokerage Agreement dated January 14, 2014 (note contract purports to be dated in 2011, which is an error)	\$1,700.00
M&M Transport	Transportation Brokerage Agreement dated December 17, 2018 (note contract purports to be dated in 2011, which is an error)	\$900.00
Mushiana Transport Inc.	Transportation Brokerage Agreement (Agreement Missing)	\$1,700.00
NightCrawler Logistics Inc.	Transportation Brokerage Agreement dated May 13, 2016 (note contract purports to be dated in 2011, which is an error)	\$19,050.00
R & S Bros Trucking	Transportation Brokerage Agreement dated June 11, 2014 (note contract purports to be dated in 2011, which is an error)	\$10,184.00
Rolling Stone Transport Inc.	Transportation Brokerage Agreement dated November 4, 2014 (note contract purports to be dated in 2011, which is an error)	\$1,000.00

Sandoval Trucking	Transportation Brokerage Agreement dated October 13, 2009	\$13,224.54
Singh Carrier Inc.	Transportation Brokerage Agreement (Agreement Missing)	\$2,900.00
Sodhi Transport Inc.	Transportation Brokerage Agreement dated May 22, 2018	\$1,500.00
Top Carrier LLC	Transportation Brokerage Agreement dated January 1, 2018	\$3,750.00
Transport Xpress LLC	Transportation Brokerage Agreement dated April 22, 2018 (note contract purports to be dated in 2011, which is an error)	\$2,700.00
TOTAL		\$78,962.05

Cure of Arrearages

The Motion seeks authorization to pay \$78,962.05 to cure arrearages pursuant to 11 U.S.C. § 365(b). Debtor in Possession states the cure amount has been included in the revised cash collateral budget.

Review of Agreements

Debtor in Possession states the numerous carrier executory contracts (“Agreements”) are identical. Debtor in Possession summarizes the essential terms as follows:

- a. The carrier agrees to timely ship goods as may be required by the Debtor (Agreement, § 3(a)); and
- b. The Debtor agrees to pay the carrier within thirty (30) days of receipt of the carrier's invoice (Agreement, § 2(d)).

The complete terms of the agreements are provided in full in the respective agreements, filed as Exhibits 1-15, Dckts. 179-182.

APPLICABLE LAW

A debtor in possession, subject to the court's approval, may assume or reject any executory contract or unexpired lease. 11 U.S.C. §§ 365, 1107.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Additionally, where the executory contracts are in default, the debtor in possession must (1) cure or provide adequate assurance of prompt cure for the default(s), (2) compensate or provide adequate assurance of prompt compensation for pecuniary loss resulting from default, and (3) provide adequate assurance of future performance under such contract or lease. 11 U.S.C. § 365(b).

DISCUSSION

Here, as with the First and Second Omnibus Motion, Debtor in Possession has demonstrated several sound business judgment reasons for assuming the executory contracts, including the continuation and preservation of Debtor in Possession's business which is at the heart of this reorganization.

Additionally, Debtor in Possession has provided testimony that the cash collateral funds have to cure the arrearages on the Agreements was included in the revised cash collateral budget accounts for these expenditures. Declaration ¶ 11, Dckt. 178.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Third Omnibus Motion To Assume Executory Contracts filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Third Omnibus Motion To Assume Executory Contracts is **XXXXXXXXXXXXXXXXXX**.

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, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion for Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Alexandrino Vasconcelos and Durvalina Vasconcelos ("Debtor"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

Debtor's Declaration (Dckt. 232) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has completed a financial management course and filed the certificate with the court;

- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor is entitled to a discharge.

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 Entry of Discharge filed by Alexandrino Vasconcelos and Durvalina Vasconcelos (“[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 is granted , and the court shall enter the discharge for Alexandrino Vasconcelos and Durvalina Vasconcelos in this case.

9.	15-90358-E-7 MDM-5	LAWRENCE/JUDITH SOUZA David Johnston	MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE 3-27-19 [776]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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 28, 2019. By the court’s calculation, 21 days’ notice was

provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Lawrence and Judith Souza ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 26, 2018, through April 18, 2019.

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 Applicant’s services for the Estate include asset analysis and disposition, negotiation regarding tax liens, and general case administration. The Estate has \$222,869.74 of unencumbered monies to be administered as of the filing of the application.

While the Chapter 7 trustee fees are significant, so was the work in this case. The Motion includes a “narrative” of the trustee’s activities, including the sale of two parcels of property and abandonment of another. The Trustee also negotiated a carveout agreement with the Internal Revenue Service that allowed monies from the sale to be generated for the benefit of the bankruptcy estate, not just the creditor with a secured claim. Dckt. 776.

The Trustee also administered the interests of the bankruptcy estate in two partnerships, one of which was abandoned and the other generated a dividend for the estate from a related bankruptcy case.

Through the administration of the bankruptcy estate the Trustee generated \$818,399.49, of which \$222,869.74 of unencumbered monies remain. The Trustee computes his fee request using the maximum percentage amounts permitted under 11 U.S.C. § 326(a). Given the size of this case, the Trustee maintained time records and reports that he has a total of 168.00 hours, as of the filing of the Motion, of time spent on this case.

The Motion also states work done by the Trustee to address tax issues in this case.

The Trustee has filed his declaration to provide testimony to support grounds stated in the Motion. Dckt. 778.

The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant’s Declaration was filed in support of this application for fees. Dckt. 778. Applicant states the present case was converted from Chapter 11 on June 23, 2017. Applicant states further that two pieces of Debtor’s property were sold after Applicant negotiated a tax lien reduction, one of Debtor’s partnership interests were in the bankruptcy case, and Applicant received a dividend on a claim filed by Debtor.

Since the First Interim Request for Fees and Expenses was granted, Applicant has paid administrative claims, resolved potential litigation, worked to account for discrepancies in payments to the FTB, reviewed claims and prepared a proposed distribution, and filed fiduciary tax returns for the Estate.

Applicant calculates allowable Trustee’s fees in this case as follows:

Applicant 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	\$38,419.97
Calculated Total Compensation	\$44,169.97
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$44,169.97
Less Previously Paid	\$20,000.00
<u>Total Second and Final Fees Requested</u>	\$24,169.97

The fees are computed on the total sales generated \$818,399.49 of gross monies realized for the Estate.

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. Second and Final Fees in the amount of \$24,169.97 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$222,869.74 of unencumbered monies to be administered. The Chapter 7 Trustee performed asset analysis and disposition, negotiation regarding tax liens, and general case administration. Applicant's efforts have resulted in a realized gross of \$818,399.49 recovered for the estate. Dckt. 778.

This case required significant work by the Chapter 7 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 7 Trustee.

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

Fees	\$24,169.97
Costs and Expenses	\$222.83

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 Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") 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 D. McGranahan is allowed the following fees and expenses as a professional of the Estate:

Michael D. McGranahan, the Chapter 7 Trustee

Fees in the amount of \$24,169.97
Expenses in the amount of \$222.83,

The fees and costs are allowed pursuant to 11 U.S.C. § 330

The fees and costs pursuant to this Motion, and fees in the amount of \$20,000.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

10. [15-90358-E-7](#)
[PEQ-1](#)

LAWRENCE/JUDITH SOUZA
David Johnston

MOTION FOR COMPENSATION FOR
RYAN, CHRISTIE, QUINN & HORN,
ACCOUNTANT(S)
3-28-19 [[787](#)]

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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

-----.

The Motion for Allowance of Professional Fees is granted.

Ryan, Christie, Quinn & Horn, the Accountant("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 28, 2018, through February 28, 2019. The order of the court approving employment of Applicant was entered on July 19, 2017. Dckt. 63. Applicant requests fees in the amount of \$14,500.00 and costs in the amount of \$115.25.

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.

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 Applicant’s services for the Estate include tax preparation and analysis, administration, and correspondence. The Estate has \$222,869.74 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Administration: Applicant spent 2.8 hours in this category. Applicant prepared documents necessary for filing this fee application.

Tax Preparation and Analysis: Applicant spent 27.7 hours in this category. Applicant analyzed tax liability of th Estate from the sale of two properties and completed the Estate’s 2018 federal and state tax returns, dealing with multiple errors made by the titling company and the FTB miscoding amounts held in escrow from the sale of the Estate’s property.

Correspondence: Applicant spent 27.5 hours in this category. Applicant prepared and engaged in correspondence as necessary in the case, including communicating at great length with the Franchise Tax Board to resolve errors made by the titling company.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Paul Quinn	58	\$250.00	\$14,500.00
Total Fees for Period of Application			\$14,500.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330. ^{FN.1.}

Application	Interim Approved Fees	Interim Fees Paid
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First Interim	\$29,612.50	\$29,612.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$29,612.50	

FN.1. The court also approved as final fees \$39,595.50, of which only \$29,696.63 has been paid to date. Order, Dckt. 688. As Applicant states in the Motion, those fee were for work performed on behalf of the Debtor in Possession in the Chapter 11 case. *See* Order, Dckt. 403. Applicant here requests fees for work performed on behalf of the Chapter 7 Trustee. *See* Order, Dckt. 633.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$115.25 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$317.70.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$83.90
Copies	\$0.05	\$31.35
Total Costs Requested in Application		\$115.25

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$ 14,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of \$115.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	\$14,500.00
Costs and Expenses	\$115.25

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

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

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

The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn (“Applicant”), Accountant for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Ryan, Christie, Quinn & Horn is allowed the following fees and expenses as a professional of the Estate:

Ryan, Christie, Quinn & Horn, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$14,500.00
Expenses in the amount of \$115.25,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

The fees and costs pursuant to this Motion, and fees in the amount of \$29,612.50 and costs of \$317.70 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and the costs 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.

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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period April 26, 2018, through May 9, 2019. The order of the court approving employment of Applicant was entered on July 18, 2017. Dckt. 620. Applicant requests fees in the amount of \$20,765.00 and costs in the amount of \$933.10.

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 Applicant’s services for the Estate include work on case administration, claims administration, and applications for fees and employment. The Estate has \$222,869.74 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 24.7 hours in this category. Applicant prepared and prosecuted the motion for authority to make interim distribution to enable the estate to utilize tax deductions arising from payments made in an interim distribution. Applicant also represented Client in dealing with tax refund and exemption issues.

Applications for Employment and Fees: Applicant spent 22.6 hours in this category. Applicant prepared and prosecuted two of its own fee applications, and one application for Client’s fees.

Claims Administration : Applicant spent 8 hours in this category. Applicant advised and represented Client in evaluating whether rents received during the Chapter 11 portion of the case were held in blocked accounts, and evaluated asserted liens on those accounts.

Additional Request: Applicant additionally requests fees of \$1,500.00 for work performed after March 9, 2019. Applicant filed a Supplemental Declaration and Exhibit E on April 16, 2019, in support of the additional requested fee. Dckts. 792, 793. The Declaration and Exhibit demonstrate \$3,828.00 in fees and \$577.45 in expenses invoiced from March 14 through March 28, 2019.

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	48.2	\$415.00 (2018) \$435.00 (2019)	\$20,215.00
Steven Williamson	0.4	\$350.00 (2018) \$370.00 (2019)	No Charge

Kevin Bonsignore	0.1	\$250.00 (2018) \$275.00 (2019)	No Charge
Kathryne Baldwin	2.2	\$250.00 (2018) \$275.00 (2019)	\$550.00
Jamie Odra (paralegal)	4	\$80.00	No Charge
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$20,765.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330. Order, Dckt. 758.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$53,196.50	\$53,196.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$53,196.50	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$933.10 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$2,922.99.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$335.70
Postage		\$250.50
Research		\$28.64
Digital Prints		\$318.26
Total Costs Requested in Application		\$933.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$20,765.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of \$933.10 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	\$20,765.00
Costs and Expenses	\$933.10

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

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

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

The Motion for Allowance of Fees and Expenses filed by Wilke, Fleury, Hoffelt, Gould & Birney, LLP (“Applicant”), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that 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 Chapter 7 Trustee

Fees in the amount of \$20,765.00
Expenses in the amount of \$933.10,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

The fees and costs pursuant to this Motion, and fees in the amount of \$53,196.50 and costs of \$2,922.99 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs 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. [18-90029-E-11](#)
[MF-38](#)

JEFFERY ARAMBEL
Matthew Olson

**MOTION TO ESTABLISH A BAR DATE
FOR REQUESTS FOR PAYMENT OF
ADMINISTRATIVE EXPENSES**
3-28-19 [768]

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 in Possession, Debtor in Possession's Attorney's, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Establish a Bar Date for Requests for Payment of Administrative Expenses is granted.

The Debtor in Possession, Jeffery Edward Arambel (“ Δ IP”) filed this Motion seeking an order establishing a bar date for administrative expenses pursuant to 11 U.S.C. Section 105(a) and 503(a). Dckt. 768. Δ IP’s proposed order would require all parties asserting administrative expenses accrued on or before March 31, 2019, other than professionals employed by the Estate, to file a Motion by May 21, 2019. Any party failing to meet the bar date would be barred from asserting such claim against Δ IP or the Estate.

Δ IP states that it and its senior secured lenders are negotiating a plan of reorganization, and the proposed bar date would provide certainty concerning the amounts of administrative expenses to be paid on the effective date of the proposed plan.

Δ IP proposes to provide notice of the bar date by mailing a notice substantially in the form attached hereto as Exhibit “B.” Dckt. 771. Δ IP asserts he has identified all parties entitled to receive notice of the proposed bar date, but may later provide supplemental notice.

DISCUSSION

A bankruptcy court has statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U. S. C. § 105(a)(emphasis added). In exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. *Law v. Siegel*, 571 U.S. 415, 421.

An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause. 11 U.S.C.A. § 503.

Here, Δ IP argues setting a bar date for administrative expenses accrued on or before March 31, 2019 would allow certainty concerning the amounts of administrative expenses to be paid and facilitate the plan of reorganization. The court agrees.

The Motion is granted, and the court shall issue an order setting the bar date for administrative expenses accrued on or before March 31, 2019, and requiring any such claim be filed on or before June 4, 2019.

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 Establish a Bar Date for Requests for Payment of Administrative Expenses filed by the Debtor in Possession, Jeffery Edward Arambel (“ Δ IP”) Financial Advisor for Filbin Land & Cattle Co., Inc, the Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion is granted, and any claim for administrative expenses pursuant to 11 U.S.C. § 503 accrued on or before March 31, 2019, shall be filed by motion on or before June 4, 2019.

IT IS FURTHER ORDERED that the June 4, 2019 bar date established by this Order shall not apply to administrative claims of professionals employed by the Debtor in Possession.

IT IS FURTHER ORDERED that ΔIP shall on or before April 23, 2019, provide parties in interest notice of the June 4, 2019 bar date substantially in the form filed with the Motion as Exhibit “B.” Dckt. 771.

13. 18-90030-E-11 AB-2	FILBIN LAND & CATTLE CO., INC. Michael St. James	MOTION FOR COMPENSATION FOR ARCH & BEAM GLOBAL, LLC, FINANCIAL ADVISOR(S) 3-28-19 [448]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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 Plan Administrator, Plan Administrator’s Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, interested parties, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

-----.

The Motion for Allowance of Professional Fees is granted.

Arch & Beam Global, LLC, the Financial Advisor (“Applicant”) for Filbin Land & Cattle Co., Inc., the Plan Administrator (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 1, 2018, through March 31, 2019. The order of the court approving employment of Applicant was entered on May 18, 2018. Dckt. 174. Applicant requests fees in the amount of \$21,675.00 and costs in the amount of \$210.00.

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 Applicant's services for the Estate include work on general case administration, employment and fee applications, preparation for and attendance at court hearings, tax issues, real estate issues, accounting, and work on the plan and disclosure statement.

The employment of Applicant was necessary to assist Debtor in the operation of the estate and fulfillment of the Debtor's duties as Debtor in Possession. Absent such employment, the principal of the Debtor would not have been able to fulfill that role. The confirmed Plan provides for payment in full of unsecured claims and senior claims, with provision made for the claim against the Debtor based on a guaranty of an obligation to be paid through the principal of the Debtor's related Chapter 11 case.

The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.8 hours in this category. Applicant assisted with the administration of the Estate and the Estate's property, including analyzation of background information and docket items.

Employment and Fee Applications: Applicant spent 2.5 hours in this category. Applicant assembled time records and prepared the first interim fee application.

Hearings: Applicant spent 5 hours in this category. Applicant prepared for, traveled to, and attended court hearings.

Tax Matters: Applicant spent 3.3 hours in this category. Applicant assisted the Client in addressing tax issues and possible impacts on accounting and MOR reporting.

Real Estate Matters: Applicant spent 3.5 hours in this category. Applicant assisted Client with analyzing real estate for sale, and communicated with Client, attorneys, and a broker regarding the same.

Accounting Matters: Applicant spent 46.4 hours in this category. Applicant assisted in accounting all operations, data entries, journal entries, and in some cases reconstructed Client’s records, in preparation of Monthly Operating Reports. The Applicant also created eight months of financial statements, including establishing the complete and properly reflective chart of accounts in Quickbooks

Plan and Disclosure Statement: Applicant spent 0.9 hours in this category. Applicant reviewed the Plan and Disclosure statement to determine impacts on Client’s financials, including taxes, MORs, and payments to creditors.

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
Bailey	10.7	\$425.00	\$4,547.50
Geary	52.7	\$325.00	\$17,127.50
Total Fees for Period of Application			\$21,675.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$34,157.50 ^{FN.1.}	\$21,946.80
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$34,157.50	

FN.1. The Order granting the Interim Fees inadvertently approved only \$27,326.00 in fees. Order, Dckt. 349. The amount requested and approved at the hearing was \$34,157.50. Civil Minutes, Dckt. 344.

The Civil Minutes are clear as to the First Interim Fees awarded.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$210.00 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$86.00.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
IT Services		\$210.00
Total Costs Requested in Application		\$210.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$21,675.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second and Final Costs in the amount of \$210.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Fees	\$21,675.00
Costs and Expenses	\$210.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Arch & Beam Global, LLC (“Applicant”), Financial Advisor for Filbin Land & Cattle Co., Inc, the Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Arch & Bean Global, LLC is allowed the following fees and expenses as a professional of the Estate:

Arch & Bean Global, LLC, Professional employed by the Plan Administrator

Fees in the amount of \$21,675.00
Expenses in the amount of \$210.00,

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

The fees and costs pursuant to this Motion, and fees in the amount of \$34,157.50 and costs of \$86.00 approved pursuant to prior Interim Application (Civil Minutes, Dckt. 344), are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

- | | | |
|--|--|--|
| 14. 18-90030-E-11
BCC-1 | FILBIN LAND & CATTLE
CO., INC.
Michael St. James | MOTION FOR COMPENSATION FOR
BACHECKI, CROM & CO., LLP,
ACCOUNTANT(S)
3-28-19 [453] |
|--|--|--|

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, interested parties, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice

is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Bachecki, Crom & Co., LLP, the Accountant (“Applicant”) for Filbin Land & Cattle Co., Inc., Plan Administrator (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 18, 2018, through March 18, 2019. The order of the court approving employment of Applicant was entered on September 16, 2018. Dckt. 313. Applicant requests fees in the amount of \$19,018.00 and costs in the amount of \$17.55.

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 Applicant’s services for the Estate include income tax analysis and return preparation; tax and cash flow planning; and consultation regarding possible asset disposition taxes. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Income Tax Analysis and Preparation of Returns: Applicant spent 18.9 hours in this category. Applicant reviewed information provided by Client, prior returns, and other documents to determine Client’s 2018 tax liability and prepare according returns. Applicant also prepared disclosure statements and tax vouchers.

Tax and Cash Flow Planning: Applicant spent 20.10 hours in this category. Applicant corresponded, conferred, and prepared estimates for and in regards to taxes from the Estate's asset disposition.

Asset Disposition Taxes: Applicant spent 9.50 hours in this category. Applicant consulted with Client and Client's counsel regarding minimization of asset disposition taxes, and performed research for this purpose.

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
Jay Crom	19	\$525.00	\$9,975.00
Virginia Huan-Lau	4.7	\$370.00	\$1,739.00
Jason Tang (2019)	18	\$300.00	\$5,400.00
Jason Tang (2018)	6.8	\$280.00	\$1,904.00
Total Fees for Period of Application			\$19,018.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$17.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$8.60
Postage		\$8.95
Total Costs Requested in Application		\$17.55

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 and Final Fees in the amount of \$19,018.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of \$17.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Fees	\$19,018.00
Costs and Expenses	\$17.55

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

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

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

The Motion for Allowance of Fees and Expenses filed by Bachecki, Crom & Co., LLP (“Applicant”), Accountant for Filbin Land & Cattle Co., Inc., Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by Plan Administrator

Fees in the amount of \$19,018.00
Expenses in the amount of \$17.55,

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

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

15. [18-90030](#)-E-11
[JGC-1](#)

FILBIN LAND & CATTLE
CO., INC.
Michael St. James

MOTION FOR COMPENSATION FOR
JUDITH G. CALLAWAY, ACCOUNTANT
3-28-19 [[443](#)]

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 Plan Administrator, Plan Administrator’s Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, interested parties, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

Judith G. Callaway, the Accountant (“Applicant”) for Filbin Land & Cattle Co., Inc., the Plan Administrator (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2018, through March 15, 2019. The order of the court approving employment of Applicant was entered on June 5, 2018. Dckt. 168. Applicant requests fees in the amount of \$5,035.50.

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 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 Applicant’s services for the Estate include posting cash receipts and disbursements, reconciling bank accounts, preparing adjusting journal entries and preparing federal and state tax returns. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Posting Cash Receipts and Cash Disbursement, and Reconciling Bank Accounts in 2016 and 2017: Applicant spent 38.5 hours in this category.

Preparing Adjusted Journal Entries and Preparation of Federal and State Tax Returns for 2016 and 2017: Applicant spent 8.2 hours in this category.

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
Judith Callaway (CPA)	38.5	\$85.00	\$3,272.50
Judith Callaway (CPA)	8.2	\$215.00	\$1,763.00
Total Fees for Period of Application			\$5,035.50

Retainer

Applicant states she is in possession of a \$5,000.00 retainer and requests authorization to disburse those amounts.

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 and Final Fees in the amount of \$5,035.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Fees	\$5,035.50
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Judith G. Callaway (“Applicant”), Accountant for Filbin Land & Cattle Co., Inc., Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Judith G. Callaway is allowed the following fees and expenses as a professional of the Estate:

Judith G. Callaway, Professional employed by Plan Administrator

Fees in the amount of \$5,035.50,

as the final allowance of fees pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator.

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

16. [18-90030-E-11](#)
[MF-13](#)

**FILBIN LAND & CATTLE
CO., INC.
Michael St. James**

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF MACDONALD
FERNANDEZ, LLP FOR RENO F.R.**

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 Plan Administrator, Plan Administrator's Attorney, creditors holding the twenty (20) largest unsecured claims, interested parties, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

Macdonald Fernandez, LLP, the Special Counsel ("Applicant") for Filbin Land & Cattle Co., Inc., Plan Administrator ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 1, 2018, through March 18, 2019. The order of the court approving employment of Applicant was entered on April 9, 2018. Dckt. 129. Applicant requests fees in the amount of \$16,440.00 and costs in the amount of \$422.14.

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 Applicant's services for the Estate include general case administration; efforts to authorize use of cash collateral; claims analysis and objections; adversary proceeding and contested matter work; facilitation of plan and disclosure statement approval; assistance with obtaining court approval to employ professionals of the Estate; asset disposition; and drafting this and the First Interim Fee Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 7.2 hours in this category. Applicant assisted the Client with the administration of this case, including by evaluating the Client's operations, reviewing and filing monthly operating reports and other reports, drafting status reports, handling issues regarding the Client's bank accounts, and developing and implementing an overall strategy for the management of the case. Applicant also assisted the Client with issues regarding adjustments to operating reports and balance sheets, status conferences, administrative expenses, coordination of tasks and miscellaneous motions.

Cash Collateral: Applicant spent 11.9 hours in this category. Applicant assisted the Client in obtaining authority to use certain cash collateral.

Claims Analysis and Objections: Applicant spent 4.4 hours in this category. Applicant assisted the Client in analyzing and, if appropriate, objecting to claims.

Adversary Proceedings and Other Contested Matters: Applicant spent 2.5 hours in this category. Applicant performed work related to regarding potential usury claims, extending the exclusivity period for filing a plan of reorganization and potential claims against a former tenant.

Plan and Disclosure Statement: Applicant spent 7.7 hours in this category. Applicant assisted the Client in developing a plan of reorganization and disclosure statement and obtaining their approval and confirmation, including by analyzing issues regarding disclosures, professional fees, voting, sale of assets, valuations, tax consequences and other issues.

Retention of Professionals: Applicant spent 0.5 hours in this category. Applicant assisted in obtaining court approval to employ professionals for the Estate.

Use, Sale, or Lease of Assets: Applicant spent 17.3 hours in this category. Applicant assisted the Client in obtaining court approval to sell real property of the Estate.

Fee Applications: Applicant spent 7.3 hours in this category. Applicant prepared this and the prior Interim Fee Application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Ian McDonald		\$375.00	
Reno Fernandez III		\$375.00	
Matthew Olson		\$275.00	
Samantha Brown		\$90.00	
Total Hours	58.8	\$279.60 ^{FN.1.}	\$16,440.00
Total Fees for Period of Application			\$16,440.00

 FN.1. While the hours are broken down by employee in the Motion, no aggregate is provided for each employee. Thus, for brevity the court has divided the requested fee by the total hours to get an estimated average billing rate for work performed in the case. A complete breakdown of the fees is provided in the Motion. Dckt. 464.

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$23,257.00	\$18,605.60
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$23,257.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$422.14 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$2,474.61.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$217.40

Postage		\$130.10
Fax		\$6.80
Wire Transfer Fees		\$15.00
PACER		\$15.90
Telephone Conference		\$36.94
Total Costs Requested in Application		\$422.14

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$16,440.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second and Final Costs in the amount of \$422.14 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Fees	\$16,440.00,
Costs and Expenses	\$422.14.

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

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

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

The Motion for Allowance of Fees and Expenses filed by Macdonald Fernandez LLP (“Applicant”), Special Counsel for Filbin Land & Cattle Co., Inc., Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Macdonald Fernandez, Special Counsel employed by Plan Administrator

Fees in the amount of \$16,440.00,
Expenses in the amount of \$422.14.

as the final allowance of fees pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator.

The fees and costs pursuant to this Motion, and fees in the amount of \$23,257.00 and costs of \$2,474.61 approved pursuant to prior Interim Application (Civil Minutes, Dckt. 345), are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

17. [18-90030](#)-E-11
[STJ-28](#)

**FILBIN LAND & CATTLE
CO., INC.**
Michael St. James

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF ST. JAMES LAW,
P.C. FOR MICHAEL ST. JAMES,
DEBTOR'S ATTORNEY(S)**
3-28-19 [[435](#)]

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 Plan Administrator , Plan Administrator’s Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, interested parties, parties requesting special notice, and Office of the United States Trustee on March 28, 2019. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00).

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

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The Motion for Allowance of Professional Fees is granted.

St. James Law, P.C., the Attorney (“Applicant”) for Filbin Land & Cattle Co., Plan Administrator (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 13, 2018, through March 18, 2019. The order of the court approving employment of Applicant was entered on March 25, 2018. Dckt. 125. Applicant requests fees in the amount of \$99,312.50 and costs in the amount of \$1,717.81.

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 Applicant’s services for the Estate include general case administration, asset disposition, development of the plan of reorganization, and preparation of the fee application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 22.85 hours in this category. Applicant performed services related to the general case administration, including holding weekly (and later bi-weekly) meetings with the Client’s insolvency professionals; advising Client on the sale of real property held by the Estate; reviewing and analyzing the Plan or reorganization; advising Client on possible eviction of a tenant; conferring regarding the need to file Monthly Operating Reports; researching retroactive cash collateral approval and drafted an appropriate brief; and attending hearings on the use of cash collateral.

Sale Efforts: Applicant spent 80.40 hours in this category. Applicant performed services related to the sale of real property of the Estate, including performing research and communicating with creditors and a civil engineer employed by the Estate regarding, as well as preparing a written application for, a lot line adjustment; communicating with parties to effectuate and performing research to determine feasibility of assignment of the first winning bidder’s ability to assign his position as to the real property; preparing a Sale Order; performing extensive work to address other issues regarding acquisition of the lot line adjustment; resolving objections to closing; engaging with an alternate titling company for the closing; preparing a spreadsheet identifying the disbursements to be made from the proceeds of sale, and causing the spreadsheet to be completed and confirmed by co-counsel’s paralegal; and drafting, filing, and serving a Report of Sale.

Reorganization Efforts: Applicant spent 71.70 hours in this category. Applicant performed services related to getting a confirmed plan of reorganization, including corresponding with Client’s creditor’s; reviewing and analyzing a forbearance agreement and proposing objections based on usury; performing extensive legal research, drafting a brief, and performing negotiations regarding the issue of usury; communicating with a tax advisor for the Estate regarding asset disposition taxes; proposing an agreement to provide for asset disposition taxes; drafting a motion to employ a tax professional; negotiating with creditor Summit in an effort to subordinate its claim in the plan of reorganization; drafting a Plan and Disclosure Statement; drafting the motion and supporting documents for a combined hearing on the Plan and Disclosure Statement; drafting supplemental Disclosure Statements; and preparing for and attending the hearing where the Plan of Reorganization was confirmed.

Professional Matters: Applicant spent 11.6 hours in this category. Applicant performed services relating to acquiring court approval for Applicant’s fees, including drafting the Interim and present Fee Applications, and attending the hearings on the 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
Michael St. James	186.55	\$625.00	\$116,593.75
Less “No Charge” ^{FN.1.}	27.65	\$625.00	(\$17,281.25)

Total Fees for Period of Application	\$99,312.50
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FN.1. Applicant in the Motion states these “no charge” entries are a voluntary reduction of the fees made in Applicant’s exercise of billing judgment.

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$50,000.00	\$50,000.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$50,000.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,752.12 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$2,168.16; Applicant now withdraws its request for \$206.30 of those Interim costs. Dckt. 435 at 24:3-7.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$249.83
Photocopying	\$0.15	\$952.85
UCC Search		\$32.38
Transcript		\$235.00
FedEx Charges		\$251.40
Total Costs Requested in Application		\$1,717.81

FEES FOR SERVICES PRIOR TO SEPTEMBER 13, 2018

Partial Denial of Fees Requested in First Interim Request for Fees

After the first hearing on the First Interim Request for Fees, the court issued an order authorizing only \$50,000.00 of the \$104,906.25 in total fees requested by Applicant. Order, Dckt. 352. The court continued the hearing to allow further briefing of the matter.

At the continued hearing, the court provided an extensive review of Applicant's services during the period of First Interim fees, and expressed concerns much of the legal services provided do not appear to be that commensurate with a \$625.00 an hour billing rate. Civil Minutes, Dckt. 386.

The court issued an Order providing that no further fees or expenses would be awarded for the period covered by the First Interim Application, with the denial of further fees without prejudice to Applicant seeking the fees on subsequent motion.

Renewed Request For Fees

In the Application, Applicant makes a renewed request for the \$54,906.25 denied pursuant to the First Interim Fee Application. However, no grounds supporting the requested relief are stated with particularity in the Motion. FED. R. BANKR. P. 9013.

In reviewing the documents filed in support of the Application, Applicant filed "Brief in Support of Final Fee Application." This document is essentially a separate motion addressing the renewed request for previously denied fees.

The arguments made in the Brief are summarized (with artistic license) as follows:

1. Now that there is a confirmed plan in this case, the past conduct of Applicant should be reevaluated. Dckt. 439 at 2:1-4.
2. Applicant was not the counsel initially retained, and thus is less culpable for failing to discover then-Debtor in Possession's unauthorized use of cash collateral. However, Applicant also is not responsible for unauthorized use of cash collateral prior to hiring professionals (for the purpose of assembling Monthly Operating Reports) who could discover said use. Applicant "is a lawyer, and not an accountant or a financial monitor." *Id.* at 2:14-3:15.
3. Despite the court's observation that marketing the property via a professional broker significantly increased the sale price achieved (\$8.35 million rather than \$2.7 million), it was the ability to sell the property without the long term (3 year) lease that resulted in the significant price. Further, the then-Debtor in Possession's decision not to market the property was a business judgment and not something Applicant was responsible for. *Id.* at 3:18-4:15.
4. Applicant's specialized knowledge of the Ninth Circuit's decision in *Spanish Peaks* allowed the real property to be sold without the 3 year lease, which was the main cause of the \$5.65 million increase in the sale price achieved. *Id.* at 4:18-6:8.

5. Applicant was forced to focus its efforts on dealing with overzealous secured creditors in this case. Applicant provided a strategy of “rational business solutions to the asserted concerns.” Because the secured creditor’s behavior was egregious, the court should ignore Applicant’s blunders. *Id.* at 6:11-9:16.

Interestingly, Applicant argues that business judgments are not its responsibility, but also that its strategy was “rational business solutions.”

6. Closing the sale of the real property was extremely challenging. *Id.* at 9:19-10:2.
7. Applicant prosecuted a novel procedure for obtaining expedited confirmation of a plan of reorganization given the Arambel case’s dependence on this case. *Id.* at 10:5-10.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$99,312.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Client under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Renewed Request For Fees

As discussed above, no grounds were stated in the Application supporting the request for the \$54,906.25 in fees previously denied by the court.

In his Brief, Applicant argues (summarized above) that because a plan has been confirmed, the court should now ignore the long, twisted path it took to get there. Applicant further argues releasing a 3 year lease agreement on real property of the Estate increased its value by \$5.65 million; that Applicant’s failures were caused by the secured creditors; that counsel, billing at a rate of \$625 per hour, should only be responsible for legal judgments made without concern for practical, real world and business implications (despite Applicant otherwise proposing “rational business solutions”); and ultimately that this case was difficult.

There is no doubt that this was a difficult case. Such is why superior bankruptcy counsel, which might be reasonably billing at an hourly rate of \$625, was necessary.

Applicant stepped in and filed his Motion for Order Authorizing Employment on February 27, 2018. Dckt. 83. The Order authorizing the employment was entered on March 2, 2018. Dckt. 95. The Debtor in Possession then operated for six months without filing any monthly operating reports, with the first reports filed on August 23, 2018. Dckts. 276-282.

Additionally, during this time the Debtor in Possession proceeded to use cash collateral without authorization. Applicant did not file a motion to use cash collateral until August 23, 2018, which sought retroactive approval for the prior seven months, plus the days in August 2018. Dckt. 284.

Applicant's (as an experienced Chapter 11 attorney) response is that it took the employment of financial professionals to figure out the estate's finances before any authorization was sought for the Debtor in Possession's use of cash collateral. Applicant claims that he did not "identify" it was occurring.

This is not credible in a bankruptcy estate where all of the estate income is being generated from rents on property that is encumbered by deeds of trust. Within three years of practice, a bankruptcy attorney knows that deeds of trust have rents, issues and profits clauses, and that the rent monies are cash collateral, the use of which is prohibited. 11 U.S.C. § 363(c)(2).

The explanation provided sounds more in the nature of a litigation strategy decision of allowing the Debtor in Possession to intentionally operate in violation of the Bankruptcy Code, and hope that no one catches them, until the estate's finances can be figured out. The risk was outweighed by having to seek an order without the Debtor in Possession being able to show that such use was permissible. Or possibly time was needed to "clean up" the principal of the Debtor in Possession's financial mess.

The court does not find Applicant's arguments now any more persuasive than before. Applicant knew, or a bankruptcy attorney with 35 years of experience billing \$625 an hour should have known, that the Debtor in Possession was operating outside of the Bankruptcy Code.

With respect to the sale, the court first notes that it is not unexpected for a bankruptcy attorney with thirty-five years of experience and a \$625 an hour billing rate to know of or be able to find a published Ninth Circuit decision relating to sale of property subject to a lease.

With respect to the principal of the Debtor in Possession choosing to self-market the real property and Applicant assisting him, one questions whether the principal was fulfilling his fiduciary duty, or the burden fell on the bankruptcy attorney with thirty-five years experience and a \$625 an hour billing rate to say to the principal:

"No, you do not get to play with the property as if it was your own anymore. You have an obligation to act like a fiduciary. Your business acumen has put you and this Debtor in bankruptcy, the creditor wolves are at the door, and you need to hire the necessary professionals who can properly market the property."

Applicant does identify a special challenge with this case - creditors who were motivated by personal animus against the principal of the Debtor and who appeared more focused on losing money so long as it caused the principal pain than acting in good faith as reasonable creditors to get paid. They went so far as to try and kill the sale of property that occurred for \$8.3 million and have it "dumped" for \$2 million (with it being sold to someone they had a relationship with). These creditors made this case more difficult for the Debtor in Possession and Applicant than it needed to be. This continued until these creditors and their counsel ended up on the wrong end of rulings or pointed comments from the court concerning their conduct.

At the end of the day, Applicant rose to the challenge, righted the ship, and worked with the formerly recalcitrant creditors to get a Plan confirmed in this case. While Applicant has not convinced the

court that the \$54,906.25 in fees should be allowed based on the additional arguments, the court does believe that an adjustment is appropriate.

The basic premise of bankruptcy proceedings is redemption. That applies to debtors, creditors, and the attorneys working the cases. Applicant, notwithstanding disagreements with the court and opposing parties, stayed on task, found constructive ways to address issues and advance a plan, and demonstrated why he has the hourly rate he does.

While not allowing the fees as previously requested, the court makes a block \$30,000.00 allowance of additional fees as an enhancement to the other fees authorized. There are consequences to ignoring the cash collateral provisions of the Bankruptcy Code and dancing on the end of string being tugged by the representative of the Debtor in Possession who intends to do business “his way,” without regard to the duties of a fiduciary. Applicant has provided those services at the blended discounted rate with \$24,906.25 of the previously disallowed fees still disallowed.

Costs & Expenses

Second and Final Costs in the amount of \$1,717.81 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

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

Fees	\$129,312.50
Costs and Expenses	\$1,717.81

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

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

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

The Motion for Allowance of Fees and Expenses filed by St. James Law, P.C. (“Applicant”), Attorney for Filbin Land & Cattle., Inc., Plan Administrator, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that St. James Law, P.C. is allowed the following fees and expenses as a professional of the Estate:

St. James Law, P.C., Professional employed by Plan Administrator

Fees in the amount of \$129,312.50

Expenses in the amount of \$1,717.81,

as the final allowance of fees pursuant to 11 U.S.C. § 330 as counsel for Plan Administrator.

The fees and costs pursuant to this Motion, and fees in the amount of \$50,000.00 and costs of \$1,961.86 (reduced from the amount previously awarded pursuant to Applicant's request) approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

No additional or further relief is granted.

18. [18-90030-E-11](#)
[WJH-1](#)

FILBIN LAND & CATTLE
CO., INC.
Michael St. James

**MOTION TO DISMISS AND/OR MOTION
TO CONTINUE HEARING**
4-4-19 [\[471\]](#)

The Motion to Dismiss is dismissed by prior Order of the court, and the matter is removed from the calender .