



**The court's decision is to grant the Motion to Sell Property.**

**APRIL 24, 2014 HEARING**

At the hearing, Creditor Select Portfolio Servicing, Inc. opposed the Motion to Sell and sought a briefing schedule. The court continued the Motion to Sell Property to allow the parties to further discuss sale agreement. Creditor is to file and serve opposition if any, on or before May 14, 2014. Trustee to file a reply, if any, on or before by May 21, 2014.

**CREDITOR'S NON-OPPOSITION**

Creditor Select Portfolio Servicing, Inc. filed a non-opposition on May 14, 2014. Dckt. 137.

**PRIOR HEARING**

The Bankruptcy Code permits the Chapter 7 Trustee, Geoffrey Richards ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the "Property" described as 116 Bruton Lane, Woodland, California.

**TERMS OF SALE**

The proposed purchaser of the Property is Gann Properties, LP ("Gann") and the terms of the sale are that Gann will purchase the property for \$262,000.00 "as is" without any warranties, Gann will also pay a buyer's premium to the estate of \$16,350.00, and will pay \$1,000 towards the City of Woodland's utility lien against the property. JP Morgan Chase, holder of the first deed of trust on the property, has agreed to accept \$232,319.64 through escrow in full satisfaction of its \$406,800.00 lien. Wells Fargo Bank, N.A., holder of a second deed of trust on the property, has agreed to accept \$8,420.13 through escrow in full satisfaction of its \$101,700.00 lien. The property tax lien of \$4,881.06, and utility tax lien of approximately \$1,000 will be paid through escrow. A 6% realtor commission, to be split between the buyer and seller's realtors (\$9,170.00 to San Diego REO, seller's realtor, and \$6,550.00 to The Real Estate Group, buyer's realtor), and \$1,149.08 in estimated closing costs will be paid through escrow. This leaves approximately \$15,860.09 in sales proceeds to be paid to the estate.

The Motion purports to seek to sell Property free and clear of all liens. However, the motion makes no reference to 11 U.S.C. § 363(f), or any of the grounds discussed therein. It appears, based on the evidence presented to the court, that the Trustee does not seek to sell the property "free and clear" of all liens, as that term is used in the Bankruptcy Code, but rather, that all lien holders will be either paid in full, or have agreed to accept a partial payment in full satisfaction of their claims. As such, the property will not have any debt attached to it at the close of escrow, and this is simply a sale pursuant to 11 U.S.C. § 363(b). The court approves the sale pursuant to 11 U.S.C. § 363(b).

**WAIVER OF 14-DAY STAY**

**June 5, 2014 at 10:30 a.m.**

The Motion requests the court to waive the 14 day stay imposed by Fed. R. Bankr. P. 6004(h). The Motion states with particularity that Wells Fargo's (holder of the second deed of trust) approval to accept \$8,420.13 in full satisfaction of it's lien expires on May 12, 2014, and that after that date Wells Fargo's pay off amount would increase substantially. The Motion states sufficient grounds for the court to waive the 14 day stay for cause pursuant to Fed. R. Bankr. P. 6004(h).

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

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

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

**IT IS ORDERED** that the Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gann Properties, LP or nominee ("Buyer"), the Property commonly known as 116 Bruton Lane, Woodland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$262,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 129, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be split between the Trustee's agent, San Diego REO, and the buyer's agent, The Real Estate Group. The amount of \$9,170.00 is authorized to be paid to San Diego REO, and \$6,550.00 is authorized to be paid to The Real Estate Group.
7. The fourteen (14) day stay of enforcement imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. [12-41713-E-11](#) MARVIN/ARNELLE BROWN  
RLC-6 Stephen M. Reynolds

MOTION FOR COMPENSATION FOR  
STEPHEN M. REYNOLDS, DEBTORS'  
ATTORNEY  
4-29-14 [[175](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on April 29, 2014. By the court's calculation, 37 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

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

**FEES REQUESTED**

Stephen M. Reynolds, Reynolds Law Corporation, the "Attorney" ("Applicant") for Marvin and Arnelle Brown the Debtors in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period January 3, 2013 through April 29, 2014. The order of the court approving employment of Applicant was entered on February 6, 2013.

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 8.0 hours in this category. Applicant assisted Client with work relating to filing and reviewing Monthly Operating Reports, communications with the client regarding case development and some of the work relating to drafting and filing motions to value collateral.

Plan Statement: Applicant spent 30.2 hours in this category. Applicant states this category includes the repeated amendment and restatement of Debtor's Plan and Disclosure Statement. Counsel attempted to use a standard Plan and Disclosure Statement that had served counsel in corporate cases. A combined Plan and Disclosure Statement was drafted based on the model plan adopted in the Northern District of California Bankruptcy Court. Ultimately counsel drafted a combined Plan and Disclosure Statement that was approved by the Court and accepted by creditors. The Plan was confirmed on April 3, 2014.

Creditor Meeting: Applicant spent 7.0 hours in this category. Applicant does not provide a description of major services.

Litigation: Applicant spent 2.5 hours in this category. Applicant does not provide a description of major services.

Claims: Applicant spent .04 hours in this category. Applicant does not provide a description of major services.

Fee Application: Applicant spent 3.7 hours in this category. Applicant prepared this Motion for Attorney's Fees.

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FN.1. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has been organized into categories, but fails to provide sufficient explanation of the tasks completed in each of these categories. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.

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#### **Statutory Basis For Professional Fees**

The allowance of professional fees in bankruptcy cases is governed

by several Bankruptcy Code provisions, including 11 U.S.C. § 330(a)(3), which states,

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).

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

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as 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 legal fee] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working

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

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

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

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

*Id.* at 959.

**FEES ALLOWED**

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Stephen M. Reynolds	51.8	\$300.00	\$15,540.00
<b>Total Fees For Period of Application</b>			\$15,540.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$15,540.00 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.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$100.00. As the Applicant did not provide in his moving papers what the costs and expenses were for, the court reviewed the raw billing data and determined the \$100.00 was for Telephonic Appearance Fees. This court does not generally allow the recovery of court call expenses on the theory that generally counsel use the Court Call service to make themselves more competitive in a larger geographic area. For those counsel, the Court Call service is akin to having phones in the office, legal resources, a desk and chair. The court disallows \$100.00 of the requested costs.

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

Fees	\$15,540.00
Costs and Expenses	\$ 0.00

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

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

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

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

**IT IS ORDERED** that Stephen M. Reynolds, Reynolds Law Corporation is allowed the following fees and expenses as a professional of the Estate:

Stephen M. Reynolds, Reynolds Law Corporation, Professional Employed by Debtor in Possession

Fees in the amount of \$ 15,540.00  
Expenses in the amount of \$ 0.00,

**IT IS FURTHER ORDERED** that the costs of \$100.00 are not allowed by the court.

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the 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.

3. [12-41713](#)-E-11 MARVIN/ARNELLE BROWN  
RLC-5 Stephen M. Reynolds

MOTION TO CLOSE CHAPTER 11 CASE  
5-5-14 [[180](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and all creditors on May 6, 2014. By the court's calculation, 30 days' notice was provided. 14 days' notice is required. That requirement was met.

The Motion to Close Chapter 11 Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Close Chapter 11 Case is granted.**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk* (9th Cir. BAP 1999) 241 BR 896, 911.

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See Fed. R. Bankr. P. 3022, Adv. Comm. Note (1991); see *In re John G. Berg Assocs., Inc.* (BC ED PA 1992) 138 BR 782, 786.

Here, the present case was filed as a voluntary Chapter 11 case on December 20, 2012. A Plan was confirmed on April 3, 2014 and the Order Confirming Plan entered on April 4, 2014. Debtor has made payments to creditors as contemplated under the Plan have commenced as scheduled. Debtor also testifies that they have made all of the required Quarterly payments to the United States Trustee.

The hearing on the motion for first and final allowance of attorney's fees will be heard at the same time and date as this motion. Debtor states that no other professional fee applications are pending or are anticipated. The court has granted the motion for first and final allowance of attorney's fees.

The court finds that Debtors have satisfactorily met the above-listed factors, and the Chapter 11 bankruptcy estate has not been fully administered within the meaning of 11 U.S.C. § 350(a) for purposes of closing this case.

The Debtors or other party in interest may seek to reopen the case as necessary and appropriate for the court's exercise of post-confirmation jurisdiction, including entry of the discharge for the Debtors.

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 Final Decree and Order Closing Case filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the bankruptcy is closed, with the court retaining, as a matter

of law, post-confirmation jurisdiction for all matters in and relating to the confirmed plan and this bankruptcy case.

4. [11-36557-E-7](#)      **MARTHA RAMIREZ**      **MOTION TO ABANDON**  
HCS-2                      **C. Anthony Hughes**                      5-22-14 [[233](#)]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion to Abandon Property is granted.**

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

The Motion filed by Alan S. Fukushima ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 946 North Oak Avenue, Lindsay, California (the "Property"). The Property is encumbered by

the lien of U.S. Bank, N.A., securing a claim of \$478,295.06. In her schedules, the Debtor valued the Property at \$270,000.00. Dckt. 15.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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

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

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

**IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:

946 North Oak Avenue, Lindsay, California

is abandoned to Martha Masiel Ramirez by this order, with no further act of the Trustee required.

5. [13-26159-E-11](#) IVAN RAVLOV CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
5-3-13 [[1](#)]

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 5/15/14 to be heard in conjunction with other matters on calendar.

6. [13-26159](#)-E-11 IVAN RAVLOV  
SAC-27 Scott A. CoBen

MOTION FOR FINAL DECREE AND  
ORDER CLOSING CASE  
5-7-14 [[341](#)]

**Final Ruling:** No appearance at the June 5, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the United States Trustee and all creditors on May 7, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to grant the Motion for Final Decree and Order Closing Case.**

Ivan Ravlov, the Debtor-in-Possession in this Chapter 11 case, seeks a final decree closing the case pursuant to Federal Rule of Bankruptcy Procedure 3022 and 11 U.S.C. § 350(a).

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See *id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

The Debtor-in-Possession states that an order confirming his plan of reorganization ("Plan") has been submitted to the court. The Plan provides that the Debtor-in-Possession proposes to pay creditors from the Debtor-in-Possession's future income, and that unsecured creditors will receive no less than the \$12,000.00 under the Plan. Under the Plan, the Debtor-in-Possession is responsible for making monthly distributions to creditors, as outlined in the confirmed plan. The effective date of the plan will be the tenth day of the month following confirmation.

Debtor-in-Possession states that he is current under the terms of the Plan and, while the Debtor reserves the right to seek to reopen the case should judicial intervention become necessary in the future, the Debtor does not anticipate a need for the Court's further involvement in the distribution process at this time. Due to these facts, it is necessary and appropriate that the Court close the case by issuing a final decree.

The Chapter 11 Plan was confirmed on April 4, 2014. There are no outstanding deposits that require distribution under the plan and no outstanding property transfers. The Debtor-in-Possession will commence payments under the Plan beginning in May 10, 2014. Debtor-in-Possession states that he is current under the provisions of the plan and all contested matters have been resolved. The final fee application of Counsel for the Debtor-in-Possession was heard and granted on April 24, 2014.

As indicated by the Advisory Committee Notes accompanying Fed. R. Bankr. P. 3022, entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. It appears that there are no outstanding deposits that require distribution under the plan and that all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtor-in-Possession, who are currently managing the estate. The Debtor-in-Possession appears to be current on all distributions under the plan and filed post-confirmation operating reports.

Thus, the court finds that the Debtor-in-Possession has satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing the Debtor-in-Possession's case.

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



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

**The court's decision is to grant the Motion for Denial of Discharge of Both Debtors.**

The U.S. Trustee ("UST") requests that the court enter an order denying the discharge of Debtor Sally Cruz ("Debtor") pursuant to 11 U.S.C. § 727(a)(8). UST contends that Debtor filed a voluntary petition for relief under Chapter 7 in this court, Case No. 07-26404 on August 13, 2007, for which Debtor received a discharge on April 10, 2008. The prior case was commenced within eight years before the date of the filing of the petition in the current case, January 28, 2014.

Debtor filed her Chapter 13 voluntary petition on January 28, 2014. On February 7, 2014, Debtor's current case was converted to a Chapter 7 case. Dckt. No. 13. The Social Security Number used by Debtor Sally Cruz in the current case and prior case are the same. Declaration of JoAnne L. David, Dckt. No. 48.

Section 727(a)(8) provides that a Chapter 7 debtor cannot receive a discharge if the debtors has previously obtained a discharge in a case commenced within eight years of the current case.

It appears that Debtor obtained a discharge in her prior case filed August 13, 2007, which falls within eight years from the filing of the current case on January 28, 2014. Therefore, the Debtor is not eligible for a discharge in their current case. The Debtor has not filed opposition to this motion, set on 28 days' notice pursuant to Local Bankruptcy Rule 9014-1(f)(1). Having received a discharge within eight years from the filing date of the current case, the Debtor is ineligible for a discharge in her current Chapter 7 case.

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

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

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

**IT IS ORDERED** that the Motion is granted, and the Debtor, Sally Cruz, is denied a discharge in her current case, Case No. 14-20763-E-11 pursuant to 11 U.S.C. § 727(a)(8).

8. [10-23577-E-11](#) GLORIA FREEMAN MOTION FOR COMPENSATION FOR  
WFH-42 Pro Se DAVID D. FLEMMER, CHAPTER 11  
TRUSTEE  
4-9-14 [[1398](#)]

**Final Ruling:** At the request of the parties and pursuant to the Notice of Continuance of Hearing, the hearing on this matter is continued to **10:30 a.m.** on **July 9, 2014**. No appearance required at the June 5, 2014 hearing.

9. [10-23577-E-11](#) GLORIA FREEMAN MOTION FOR COMPENSATION FOR  
WFH-44 Pro Se GONZALES AND SISTO, LLP,  
ACCOUNTANT(S)  
4-9-14 [[1403](#)]

**Final Ruling:** No appearance at the June 5, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the United States Plan Administrator, all creditors, parties requesting special notice, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 57 days' notice was provided. 35 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6) 21 day notice and L.B.R. 9014-1(f)(1) 14-day opposition filing requirements.)

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

**FEES REQUESTED**

Gonzales & Sisto ("Applicant"), Accountant for the Trustee and Plan Administrator in this case, Davis D. Flemmer, ("Client"), makes an Interim and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period August 15, 2013 through October 1, 2013. The order of the court approving employment of Applicant was entered on August 29, 2013, Dckt. 1039.

The application seeks interim and final allowance of fees in the amount of \$270.00. Applicant states that the sum represents .9 hours of the Applicant's time, charged at a rate of \$300.00 per hour. The court has not previously awarded any compensation to Applicant, but the Applicant has been paid the amount of \$2,618.00 for post-confirmation services in this case.

The Invoices filed in support of the Applicant for Fees, which purport to be for services rendered for the bankruptcy estate of Debtor-in-Possession, Gloria Freeman, contain two entries dated August 15, 2013 and September 18, 2013. Exhibit B, Dckt. No. 1406 at 5.

The first entry includes the following description: "call from trustee and Dan Egan re general employment issues. Conflict check and review/edit employment declaration," a task which Applicant spent .5 hours on performing. The second entry on the Client Invoices attached to this Motion states: "Discussion with the trustee re 2012 tax transcripts and tax reporting issues" for .40 hours. *Id.* at pages 5-6.

### **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).

**Benefit to the Estate**

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

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

*Id.* at 959.

A review of the application shows that Applicant has undertaken preliminary efforts to review the tax reporting issues of the estate, and to consult with the Trustee and conduct the necessary conflict checks to ensure that the Applicant does not hold any adverse interest to the estate. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES ALLOWED**

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
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Gene Gonzales (experience not described in Declaration)	.9	\$300.00	\$270.00
<b>Total Fees For Period of Application</b>			\$270.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The Application for Final Allowance Fees in the amount of \$270.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 is authorized to be paid by the Plan Administrator under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution a Chapter 11 case.

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

Fees	\$270.00
Costs and Expenses	\$ 0.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gonzales & Sisto ("Applicant"), Accountant for the Trustee and Plan Administrator in this case, Davis D. Flemmer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gonzales & Sisto is allowed the following fees and expenses as a professional of the Estate:

Gonzales & Sisto, Professional Employed by Trustee and Plan Administrator in this case,

Fees in the amount of \$ 270.00  
Expenses in the amount of \$ 0.00,

**IT IS FURTHER ORDERED** that the Administrator under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

