

2. [12-34690-E-7](#) FAUSTO VILLALOBOS
DNL-10

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
LUKE HENDRIX, TRUSTEES
ATTORNEY(S)
5-10-16 [[173](#)]

Final Ruling: No appearance at the June 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 10, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Thomas Aceituno, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 1, 2012 through May 9, 2016. The order of the court approving employment of Applicant was entered on October 15, 2012, Dckt. 80. Applicant requests reduced fees in the amount of \$5,090.71 and costs in the amount of \$2,409.29.

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,

June 7, 2016 at 10:30 a.m.

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other

professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including investigation, marshaling, and liquidation of the real property at 6301 Franklin Boulevard, Sacramento, California and the commercial real property 3300-3324 Fulton Avenue, Sacramento, California. The estate has \$14,600 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Investigation and Administration: Applicant spent 17.7 hours in this category. Applicant assisted Client with investigating the estate's interest in the Fulton Property; assisted Client in recovery from tenants; communicated with parties concerning the McConnachie secured claim against the Fulton Property; prepared three-day notice on Defendants regarding unpaid rents; and assisted in investigating the estate's interest in the Franklin Property.

Adversary Proceedings: Applicant spent 67 hours in this category. Applicant assisted the Trustee in an action seeking damages for unlawful detainer of the Fulton Property, turnover of certain fixtures and equipment located at the Fulton Property, and injunctive relief.

Fulton Property: Applicant spent 12.3 hours in this category. Applicant assisted the Client with seeking rents from tenants, prepared Motion to Abandon Fulton Property, and appeared at the hearing.

Employment and fee Applications: Applicant spent 15.7 hours in this category. Applicant prepared the application to employ the Applicant and Coldwell broker, and prepared the instant Motion.

Services Rendered in Relation to the Franklin Property: Applicant spent 154.55 hours in this category. Applicant communicated with client, Trustee Fukushima, Debtor's counsel, Ernest's counsel regarding the state taking; prepared a stipulation concerning the automatic stay; prepared and recorded a grant deed giving a 50% interest to the instant estate and the

Ernest estate; prepared deposition of project engineer regarding eminent domain; negotiated terms with the County concerning the eminent domain issue; and prepared quitclaim deed transferring the estate's interest in the Franklin Property to the Ernest's estate, pursuant to the stipulation between the trustees. The Client and Trustee Fukushima of the Ernest's estate agreed to split the attorney's fees incurred 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
J. Russell Cunningham	10.7	\$375.00	\$4,012.50
J. Russell Cunningham	5.7	\$400.00	\$2,280.00
J. Luke Hendrix	48.4	\$225.00	\$10,890.00
J. Luke Hendrix	8.1	\$275.00	\$2,227.50
Gabriel P. Herrera	23.8	\$175.00	\$4,165.00
Gabriel P. Herrera	1.4	\$195.00	\$273.00
Gabriel P. Herrera	0.1	\$225.00	\$22.50
Nabeel M. Zuberi	0.6	\$75.00	\$45.00
Nabeel M. Zuberi	2.6	\$175.00	\$455.00
Nabeel M. Zuberi	6.3	\$200.00	\$1,260.00
Sara Puricelli	5.0	\$75.00	\$375.00
Courier	2.3	\$50.00	<u>\$115.00</u>
Total Fees For Period of Application			\$26,120.50

The Applicant states that the above amount plus the estate's 50% liability for the fees incurred in relation to the Franklin Property totals \$44,122.38. However, Applicant has agreed to cap its fees in the amount of \$5,090.71.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,409.29 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$167.58
Photocopies	\$0.10	\$188.90
Fax Charges		\$10.00
Advances (certified copies; recording fees; parking)		\$2,042.81
Total Costs Requested in Application		\$2,409.29

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$5,090.71 for its fees incurred for the Client. First and Final Fees in the amount of \$5,090.71 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case under the confirmed Plan.

Costs and Expenses

The First and Final Costs in the amount of \$2,409.29 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$5,090.71
Costs and Expenses	\$2,409.29

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 Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Thomas Aceituno, 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 Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional Employed by Trustee

Fees in the amount of \$5,090.71
Expenses in the amount of \$2,409.29,

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

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