UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 7, 2017, at 10:30 a.m.

1.	**16-90401-E-7** **WFH-10**	**NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston**	**MOTION FOR COMPENSATION FOR BURR PILGER MAYER, INC., ACCOUNTANT(S)** **8-8-17 [214]**

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 August 8, 2017. By the court's calculation, 30 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.

Burr Pilger Mayer Inc., the Accountant ("Applicant") for Russell Burbank, the Chapter 7 Trustee (formerly, Chapter 11 Trustee) ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 1, 2017, through July 6, 2017. The order of the court approving employment of Applicant was entered on September 12, 2016. Dckt. 86. Applicant requests fees in the amount of $7,195.00, and final allowance of $18,240.74 in interim fees.

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 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 cab 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 case administration, negotiation and approval of affiliation agreement, and managing Debtor's finances. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 15.3 hours in this category. Applicant set up bank accounts, provided accounting information for status reports and fee applications, and prepared Monthly Operating Reports to the U.S. Trustee.

Bookkeeping and Accounting: Applicant spent 22.9 hours in this category. Applicant maintained Debtor's records, reconciled various bank accounts for day-to-day operations of Debtor's business, and reported periodically to the court and U.S. Trustee.

Tax Compliance: Applicant spent 0.3 hours in this category. Applicant prepared and filed Debtor's annual State and Federal tax returns and other tax compliance forms as required by law.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Andrea Cope, Client Services Partner	0.1	$450.00	$45.00
Rich Gunn, Tax Partner	0.2	$415.00	$83.00
Stephanie Avakian, Senior Accountant	38.2	$185.00	$7,067.00
Total Fees for Period of Application			$7,195.00

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	$17,557.50	$13,168.13
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$17,557.50	

Costs & Expenses

Pursuant to prior interim applications, the court has allowed costs of $683.24.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $7,195.00 and prior Interim Fees in the amount of $17,557.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Prior Interim Costs in the amount of $683.24 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.

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

Fees $7,195.00

pursuant to this Application and prior interim fees of $17,557.50 and interim costs of $683.24 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 Burr Pilger Mayer Inc. ("Applicant"), Accountant for Russell Burbank ("the Chapter 7 Trustee") (formerly, the Chapter 11 Trustee) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Burr Pilger Mayer Inc. is allowed , for the period February 1, 2017, through July 6, 2017, the following fees and expenses as a professional of the Estate:
>
> Burr Pilger Mayer Inc., Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $7,195.00,
>
> as the final allowance of fees pursuant to 11 U.S.C. § 330 as accountant for the Chapter 7 Trustee.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $17,557.50 and costs of $683.24 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.

2.	**16-90401-E-7** **WFH-11**	**NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston**	**MOTION FOR COMPENSATION FOR RUSSELL K. BURBANK, CHAPTER 11 TRUSTEE** **8-8-17 [219]**

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 August 8, 2017. By the court's calculation, 30 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.

Russell Burbank, serving as the former Chapter 11 Trustee (now serving as the Chapter 7 Trustee) ("Applicant") for Debtor National Emergency Medical Services Association, Inc. ("Client"), makes a Second Interim and Final Request for the Allowance of Fees and Expenses as the Chapter 11 Trustee in this case. This case have been converted to one under Chapter 7.

Fees are requested in the present Motion for the period February 1, 2017, through July 5, 2017.

Fees and costs previously requested and approved the court pursuant to the First Interim Application are $7,413.47 in fees and $309.00 in costs. Order, Dckt. 170.

Applying the maximum commission allowed for Trustee's fees as provided in 11 U.S.C. § 326, the maximum fees based on distributions as of the final Chapter 11 Trustee fee application would be $14,574.35.

STATUTORY BASIS FOR TRUSTEE FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, court filings and hearings, and supervision of operations pre-servicing agreement. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 7.8 hours in this category. Applicant supervised the professionals working with the case, maintained Debtor's operations, cash, and other assets.

Court Filings and Hearings: Applicant spent 1.10 hours in this category. Applicant prepared status reports, made telephonic and personal appearances in Court, and reviewed and approved Monthly Operating Reports to the U.S. Trustee.

Supervision of Operations Pre-Servicing Agreement: Applicant spent 1.90 hours in this category. Applicant terminated Debtor activities that were being assumed by National Association of Government

Employees ("NAGE") under the servicing agreement and assured that member dues flowed properly to NAGE as per the agreement.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$8,824.35
Calculated Total Compensation	**$14,574.35**
Less Previously Paid	$7,413.67
Unpaid Trustee's Fees Requested	$4,860.00

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, $7,413.67 as First Interim Fees. The Chapter 7 Trustee calculates his fee request based upon $226,487.00 in disbursements.

COSTS REQUESTED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $104.28 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $309.00.

The costs requested in this Application are for traveling to the Modesto courthouse for a status hearing—mileage billed at $0.575 per mile.

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 Interim Fees in the amount of $4,860.00 and the prior fees and costs in the amount of $7,413.67 allowed by the order on the First Interim Application 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.

COSTS ALLOWED

Second Interim Costs in the amount of $104.28, in addition to the pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

This case required significant work by the Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation and reimbursement of expenses to the Chapter 11 Trustee in this case:

Total Fees	$14,574.35
Costs and Expenses	$413.28

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Russell Burbank ("Applicant"), the Chapter 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 Russell Burbank is allowed the following total fees and expenses (the aggregate of the prior interim fees and additional fees in this motion) as the Chapter 7 Trustee in this Bankruptcy Estate:
>
> Russell Burbank, the Chapter 7 Trustee
>
> Fees in the amount of $14,574.35
> Expenses in the amount of $413.28
>
> The fees and costs are allowed 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, after giving credit to all monies paid pursuant to interim fee authorizations, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case, including the computation of the maximum aggregate fees for bankruptcy trustees in this case and the priority afforded Chapter 7 administrative expenses pursuant to 11 U.S.C. § 726(b).

3.	**16-90401-E-7** **WFH-15**	**NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston**	**MOTION FOR AUTHORITY TO OPERATE BUSINESS** **8-8-17 [204]**

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 August 8, 2017. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

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

The Motion for Authority to Operate Business for Limited Time is granted for the period through and including December 31, 2017.

Russell Burbank, the Chapter 7 Trustee, ("Movant") seeks court approval to operate National Emergency Medical Services Association, Inc. ("Debtor"), temporarily in this case. Movant states that he was appointed as the Chapter 11 Trustee in this case and then as the Chapter 7 Trustee when the case was converted. He seeks to continue operating Debtor's business through December 31, 2017, to fulfill a servicing agreement with National Association of Government Employees ("NAGE") that the court approved in November 2016.

Movant states that in September 2016, he negotiated a servicing agreement with NAGE for NAGE to provide ongoing representation services to Debtor's union members. That agreement was approved by the court on November 3, 2016. Dckt. Xx. Pursuant to the agreement, the Estate's only obligation is to receive dues from the employer's of Debtor's four remaining collective bargaining units and

then remit those dues to NAGE. Until the servicing agreement terminates, the Trustee will continue to receive dues from those employers and will be obligated to turn them over to NAGE. For that one reason, the Trustee requests authorization to operate Debtor's business. He believes that three of four collective bargaining units will have certified other collective bargaining agents by December 31, 2017. If any bargaining unit has not certified another agent by the end of the year, then Movant will seek further authorization to operate Debtor's business.

Section 704(a)(8) of the Code instructs the trustee in a Chapter 7 case to "file with the court . . . periodic reports and summaries of the operation" of a debtor's business if it has been authorized to be operated. Section 704(a)(1) requires that a trustee close the bankruptcy estate "as expeditiously as is compatible with the best interests of parties in interest." Here, Movant has argued reasonably that he is obligated to continue performing under a court-approved service agreement with NAGE. Movant anticipates a time (coming soon) when the service agreement will not need to be performed anymore, but as of now, he has a duty under it to remit dues payments from employers to NAGE. Movant has given the court sufficient reason to approve operating Debtor's business to fulfill the terms of the servicing agreement with NAGE.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Operate Business for Limited Time filed by Russell Burbank, 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 Authority to Operate Business for Limited Time is granted, and Movant is authorized to operate National Emergency Medical Services Association, Inc. ("Debtor"), for the period through and including December 31, 2017, which authorization includes, without limitation, paying all the current expenses, taxes, and other amounts in the ordinary course of this business.

4. **16-90401-E-7 WFH-9**

NATIONAL EMERGENCY MEDICAL SERVICES
David Johnston

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEE'S ATTORNEY(S)
8-8-17 [209]

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 August 8, 2017. By the court's calculation, 30 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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney ("Applicant") for Russell Burbank, 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 February 1, 2017, through June 29, 2017. The order of the court approving employment of Applicant was entered on September 12, 2016. Dckt. 85. Applicant requests fees in the amount of $11,461.50 and costs in the amount of $654.54.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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 cab 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 case administration and employment applications. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 12.2 hours in this category. Applicant reviewed and filed monthly operating reports, monitored activity with National Association of Government Employees ("NAGE") and pending unfair labor practice proceedings, represented the Trustee in one status conference, and filed and prosecuted a motion for conversion of the case to Chapter 7.

Employment Application: Applicant spent 19.0 hours in this category. Applicant prepared a first interim fee application, and reviewed, revised, and served first interim fee applications for the Trustee and Trustee's accountant. Applicant also appeared at the hearing on the fee applications.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel Egan, Attorney	31.20	$405.00	$12,636.00
Total Fees for Period of Application			$12,636.00

Applicant's calculation of fees appears incorrect. Throughout the Motion, Applicant requests $11,461.50 in fees for 31.20 hours of work performed in this case.

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	$31,196.00	$23,397.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$31,196.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $654.54 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $619.89.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		$351.00
Postage		$303.54
Total Costs Requested in Application		$654.54

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 $11,461.50 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 $654.54 and prior Interim Costs in the amount of $619.89 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.

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

Fees	$11,461.50
Costs and Expenses	$654.54

pursuant to this Application and prior interim fees of $31,196.00 and interim costs of $619.89 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Applicant"), Attorney for Russell Burbank ("the Chapter 7 Trustee") (formerly, the Chapter 11 Trustee) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that 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 $11,461.50
> Expenses in the amount of $654.54,

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

The fees and costs pursuant to this Motion, and fees in the amount of $31,196.00 and costs of $619.89 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.

The approval of the Final Fee Application does not remove or authorize the withdrawal of Counsel for the Trustee, but provides for the final (last) compensation to be authorized for said counsel for work in this case.

5. **17-90608-E-7** **JON MOROTTI AND ADDIE BUCK**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-9-17 [18]

Final Ruling: No appearance at the September 7, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se)* and Chapter 7 Trustee as stated on the Certificate of Service on August 11, 2017. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on July 26, 2017 .

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

6. **17-90214-E-7** **EMIDIO RAMIREZ** **CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS**
GRF-1 **Pro Se**
5-26-17 [23]

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

The Trustee alleges that Emidio Ramirez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Based on Debtor's failure to attend the First Meeting of Creditors, the Trustee requests that this case be dismissed.

Alternatively, if Debtor's case is not dismissed, the Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 1:00 p.m. on July 7, 2017. If Debtor fails to appear at the continued Meeting of Creditors, the Trustee requests that the case be dismissed without further hearing.

CREDITOR'S OPPOSITION

CitiMortgage, Inc. ("Creditor"), holder of a secured claim, filed an Opposition on June 15, 2017. Dckt. 26. Creditor argues that Debtor has engaged in a scheme of multiple bankruptcy filings that has prevented Creditor from enforcing its state court rights against real property commonly known as 3636 Fallview Avenue, Ceres, California ("Property"). Creditor argues that Debtor and other individuals have filed three prior bankruptcy cases since December 2015 that have been dismissed for either failure to file

documents or for failure to appear at the Meeting of Creditors. Creditor states that it will be bringing a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(4) and requests that the court continue the hearing on this Motion by sixty days to allow Creditor time to file, serve, set for hearing, and hear that motion for relief from the automatic stay.

JUNE 29, 2017 HEARING

At the hearing, the court continued the matter to 10:30 a.m on September 7, 2017. Dckt. 30.

TRUSTEE'S REPORT

The Trustee filed a statement on the docket on July 7, 2017, that the Continued Meeting of Creditors was conducted, that Debtor did not appear, and that the meeting was continued to 1:00 a.m. on September 28, 2017. The Trustee amended his report on August 28, 2017, to reflect that the meeting would be held at 1:00 p.m. on September 28, 2017.

DISCUSSION

Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1). For this matter, though, Creditor has argued that the case should not be dismissed because of an alleged bankruptcy filing scheme that Debtor has engaged in over the past few years to prevent Creditor from exercising its rights in state court.

The court has reviewed the cases asserted by Creditor to be part of a fraudulent scheme and has noticed the following property listed in each case that Creditor cites, plus two additional ones for the debtor in this case:

A. Justino Quiles, Case No. 15-91168

1. Chapter 7 Case filed on December 2, 2015, *in pro se.*

2. Property listed on the voluntary petition as the debtor's current address. Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. Dckt. 15.

4. Case dismissed on December 31, 2015, for failure to file documents including Schedules and Statement of Financial Affairs.. Dckt. 21.

B. Emidio Ramirez, Case No. 16-90439

1. Chapter 7 Case filed on May 23, 2016, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.

4. Case dismissed on June 21, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. Dckt. 19.

C. Justino Sandoval, Case No. 16-90789

1. Chapter 7 Case filed on August 29, 2016, *in pro se*.

2. Property listed on the voluntary petition as the debtor's current address. 16-90789, Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. *Id.*, Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.

4. Case dismissed on September 20, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 20.

D. Justino Quiles, Case No. 16-90881

1. Chapter 7 Case filed on September 26, 2016, *in pro se*.

2. Property listed on the voluntary petition as the debtor's current address. 16-90881, Dckt. 1.

3. On Schedule A/B filed in Case No. 16-90881 no interest in the Property. *Id.*, Dckt. 14 at 3.

4. On Schedule D filed in Case No. 16-90881, Justino Quiles states under penalty of perjury that there are no creditors with any secured claims. *Id.*, Dckt. 14 at 15.

5. Case dismissed on January 16, 2017, for failure to appear at the Meeting of Creditors. *Id.*, Dckt. 29.

E. Emidio Ramirez, Case No. 16-91019

1. Chapter 7 Case filed on November 7, 2016, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. 16-91019, Dckt. 1.

3. Case dismissed November 28, 2016, for failure to file document, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 14.

F. Emidio Ramirez, Case No. 17-90214 (Current Bankruptcy Case)

1. Chapter 7 Case filed on March 17, 2017, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. 17-90214, Dckt. 1.

3. Debtor states under penalty of perjury on Schedule A/B that he does not have any interest in the Property. *Id.*, Dckt. 21 at 1. On Schedule D Debtor states under penalty of perjury that he has no creditors with any secured claims. *Id.* at 13. On Schedule H Debtor states under penalty of perjury that he has no unexpired leases. *Id.* at 22.

No declaration or evidence, other than this court's own files, has been provided by Creditor as to why or how the bankruptcy filings have impaired its ability to proceed with a foreclosure sale. The Opposition merely states that it has. Creditor does not identify any demands or contentions by any of the debtors in the six cases in which they asserted that a non-judicial foreclosure sale could not be conducted to the non-productive Chapter 7 bankruptcy case filings.

It is asserted in the Opposition that Debtor executed a promissory note, which note is secured by the Property.

Presumably, the detail underlying the general contention of there being bad faith filings as part of a scheme to warrant the relief under 11 U.S.C. § 362(d)(4) would have been provided to the court—with such detail supported by competent testimony and properly authenticated documentary evidence. Since the June 29, hearing, Creditor has not filed anything further with the court for this case.

The court presumes that Creditor no longer seeks to oppose this motion or seek relief under 11 U.S.C. § 362(d)(4) because no further pleadings have been filed, despite the court specifically continuing the hearing on this matter to allow Creditor to take such action. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

7. **16-90736-E-11** **RONALD/SUSAN SUNDBURG** **MOTION FOR APPROVAL OF STIPULATION RE: ADEQUATE PROTECTION AND PLAN TREATMENT**
TBG-5 **Stephan Brown** **8-24-17 [102]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2017. FN.1. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

FN.1. The Proof of Service states that the pleadings for this Motion were served on September 7, 2017, which is impossible because the Proof of Service was filed with the court on August 24, 2017, fourteen days before alleged service. *See* LOCAL BANKR. R. 9014-1(e)(1) (requiring service on or before the date filed with the court).

It appears that Movant listed the hearing date, instead of the service date. The court infers that service occurred on the date when the Certificate was executed - August 24, 2017.

The Motion for Approval of Compromise was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Motion for Approval of Compromise is denied.

Ronald Sundburg and Susan Sundburg, Debtor in Possession ("Movant"), request that the court approve a compromise and settle competing claims and defenses with Bank of America, N.A. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's adequate protection and plan treatment.

INSUFFICIENT NOTICE

Movant filed a Proof of Service that is post-dated for the alleged date service occurred. From the pleadings, the court is not able to determine when service occurred, nor is it able to calculate whether sufficient notice of the Motion has been provided to all parties. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Ronald Sundburg and Susan Sundburg, Debtor in Possession ("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 is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES PROOF OF SUFFICIENT NOTICE FOR THIS MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court 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 Stipulation, Dckt. 104):

A. Settlor shall have an allowed secured claim in this case, secured by Movant's collateral and cash collateral, in the amount of $135,280.33.

B. Settlor shall also have an allowed unsecured claim in the amount of $257,690.10.

C. Movant shall make adequate protection payments to Settlor by the tenth day of each month in the amount of $200.00.

   1. Adequate protection payments shall continue until there is a confirmed plan of reorganization in this case, until the case is dismissed, or until the court orders otherwise.

D. Settlor's secured claim shall be in its own class or classes, shall be impaired, and shall include:

   1. The parties agree that Movant various financing agreements with Settlor shall continue to be secured by Deeds of Trust in favor of Settlor.

2. The loan between Movant and Settlor shall be modified for Movant to pay interest at 6.4285 percent annually as of the petition date with a fixed monthly payment of $1,802.39.

3. The loan shall be modified to be due at payable eight years from a plan confirmation date.

4. Movant shall provide Settlor with annual personal financial statements and copies of filed tax returns.

5. Movant agrees (if necessary) to execute new loan documents consistent with the stipulation once a plan is confirmed and the case is closed.

6. Settlor shall retain a lien on Movant's collateral until its secured claim has been paid fully.

7. Movant shall confirm a plan by November 10, 2017.

8. If Movant defaults post-confirmation, Settlor may seek relief from the automatic stay and proceed to enforce state law remedies against Movant's commercial property.

E. The stipulation will not affect the validity, enforceability, extent, and priority of Settlor's lien under the loan with Movant.

F. Movant shall not grant or agree to grant any lien or encumbrance on its collateral, cash collateral, or Debtor in Possession account, unless Settlor claim is paid fully, and with court approval as necessary.

G. Movant shall allow Settlor to inspect Movant's commercial property and the books and records related to it.

H. Movant shall maintain property, casualty, and liability insurance that complies with U.S. Trustee guidelines and with loan documents with Settlor.

DISCUSSION

The present Motion is one to merely issue an order authorizing "adequate protection." See Notice of Motion, Dckt. 103. The Notice fails to provides any summary of the terms of the "adequate protection." However, the actual Motion and supporting pleadings were served on all parties in interest, not merely the Notice. Cert. of Service, Dckt. 108. While not in the Notice, the actual terms are in documents served on all parties in interest.

Relief Requested in Motion

The Motion states that it seeks court approval for "adequate protection" and "plan treatment." The motion before the court is not a Chapter 11 plan, there is not a Chapter 11 plan before the court for confirmation, and no authority is provided for the court "pre-confirming" plan terms for one creditor.

As opposed to the Motion being one for approval of an adequate protection stipulation and "plan treatment," the body of the Motion states that it is one seeking approval of a compromise.

The Motion states with particularity (Fed. R. Bankr. P. 9013) that:

A. Movant, as debtor in possession is authorized to operate the business and property of the bankruptcy estate. (The Motion does not identify what such business is.)

B. The Debtors, the Movant Debtor in Possession, and Bank of America, N.A. have entered into a stipulation for "adequate protection" and "Intended Plan Treatment."

C. The terms of such stipulation are stated in the Motion, but the court and parties in interest are directed to Exhibit to investigate such terms.

D. Movant believes that the compromise, of some unidentified dispute, is the "best compromise negotiable under the facts."

E. The Stipulation protects interests of creditors by preserving a veterinary clinic to generate income.

Motion, Dckt. 102.

It concerns the court when a party is reluctant to state with particularity the terms of a compromise, what issues are being compromised, and how it benefits the estate in the motion. Rather than clearly and affirmative stating what is to be "compromised," the court and parties in interests are sent to the base documents to surmise what the Debtor in Possession would assert if the Debtor in Possession did make such disclosures in the Motion. Each party in interest is left to make his or her best guess at what the Debtor in Possession would state in complying with the requirements of Federal Rule of Bankruptcy Procedure 9013.

Review of Stipulation

Going to the seventeen page Stipulation filed as Exhibit A, Dckt. 106, the court divines the following as to what stipulation is being requested approval and what is being "compromised" in this Contested Matter:

A. First, the court is to approve as "fact" nineteen paragraphs of recitals.

B. Second, Bank of America, N.A. Us conclusively allowed a secured claim in the amount of $135,280.33, and determine that it is secured by the Yosemite Deed of Trust, the Abbie Deed of Trust, the Adams Deed of Trust, and unidentified personal property.

C. Third, that Bank of America, N.A. is conclusively allowed an unsecured claim in the amount of $257,690.10.

D. Debtor in Possession shall make a$200.00 a month adequate protection payment to Bank of America, N.A.

E. The court orders that any plan proposed by Debtor (as opposed to the Debtor in Possession who is represented by counsel in this case) shall be required to provide:

1. Bank of America, N.A.'s secured claim must be in its own class;

2. Bank of America, N.A.'s secured claim must be impaired;

3. Bank of America, N.A.'s secured claim must be secured by the Yosemite Deed of Trust, the Abbie Deed of Trust, the Adams Deed of Trust, and unidentified personal property;

4. Bank of America, N.A.'s must be provided for 6.4285% interest for its Claim (not distinguishing between secured and unsecured);

5. The "Loan" will be due eight years after confirmation of any plan;

6. Debtor will provide annual financial information;

7. Debtors will execute any loan documents requested by Bank of America, N.A.;

8. Bank of America will retain its lien for the Secured Claim until the Claim has been paid in full;

9. In the event of a post-confirmation default, Bank of America, N.A. may seek relief from the automatic;

10. The Debtor in Possession agrees not to obtain any post-petition credit encumbered by the real and personal property securing Bank of America, N.A.'s claim.

11. Default provisions for Debtor and Debtor in Possession failing to perform their obligations under the Settlement. (This allowing for a

default by Debtor to impair the rights and interests of the bankruptcy estate, under the control of the fiduciary Debtor in Possession.)

12. The Stipulation is without prejudice to the Debtor or Bank of America's rights to seek relief from the bankruptcy court. Conspicuously absent from the exception is the fiduciary Debtor in Possession who must act to assert and enforce rights of the bankruptcy estate.

13. The automatic stay is modified "as necessary" to "permit the actions and events" stated in the Stipulation to occur.

14. The document is to be given a "neutral construction." (The court interprets this to mean that all of the parties and their counsel are responsible for the Stipulation which has been presented to this court.)

15. The court orders that no plan can be proposed by the Debtor (but apparently not the Debtor in Possession or creditors) that is contrary to the Stipulation.

Stipulation, Exhibit A; Dckt. 106.

Approval of a Compromise

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 presents arguments for some of the factors.

Probability of Success

Movant does not address this factor.

Difficulties in Collection

Movant does not address this factor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the stipulation allows Movant to avoid future expense, inconvenience, and delay of litigating with a major creditor. Additionally, Movant argues that the stipulation prevents Movant and Settlor from litigating claims related to Movant's properties and from incurring litigation costs. Dckt. 107.

Paramount Interest of Creditors

Movant argues that the stipulation will protect the interests of all other creditors by preserving real property for use as a veterinary clinic to generate income and fund any proposed plan. *Id.*

RULING

Here, the Debtor in Possession, Debtor and Bank of America, N.A. have presented the court with a "Stipulation" that allows claims, mandates the terms of any plan, does not "compromise" any claims or disputes, and renders the court generally unnecessary to rule on issues arising under the Bankruptcy Code. Rather, in this Stipulation, Debtor and Bank of America, N.A., with the Debtor in Possession appearing to take a subservient role, seek to foreclose out any other creditors or the court interfere with their desires.

No authority is offered for the attempt to pre-confirm terms of any Chapter 11 Plan by mandating what they must be. In some parts, the Debtor is given the ability to harm the rights of the estate, usurping the fiduciary duties of the Debtor in Possession.

A review of the Docket shows that the Debtor in Possession has failed to file the Monthly Operating Report for July 2017, the deadline for filing was mid-August 2017.

The glaring error in the present Motion is that the "compromise" appears to merely be an effort to shortcut the good faith prosecution of a plan in this case. Rather than "stipulating" to what terms may be in a future plan, the good faith prosecution of this case would be to file a plan which states the terms under which Bank of America, N.A. will support a plan.

For Bank of America, N.A., the good faith prosecution of its claims in this case is to file proofs of claims stating those amounts, not hiding in a "stipulation" the allowance of such claims.

This case has been pending since August 11, 2016. In the 393 days that have passed, the Debtor in Possession has not filed and sought to prosecute a plan with the "stipulated terms," but instead create binding plan terms with Bank of America, N.A. through a Stipulation filed on only fourteen days notice.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court cannot determine that the compromise is in the best interest of the creditors and the Estate. Further, the Debtor, Debtor in Possession, and Bank of America, N.A. go beyond a mere "compromise" of a dispute, and seek to un-write the Bankruptcy Code and create their own personal confirmation process. The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Ronald Sundburg and Susan Sundburg, Debtor in Possession ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Bank of America, N.A. ("Settlor") 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 Stipulation (Dckt. 104).

8. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU AND KASSENBROCK FOR ANTHONY ASEBEDO, DEBTORS' ATTORNEY(S) 5-16-17 [589]**
MHK-28 **David Johnston**

Tentative Ruling: The Motion for Compensation 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).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion for Compensation is granted.

Meegan, Hanschu & Kassenbrock, the Attorney ("Applicant") for Lawrence Souza and Judith Souza, Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 1, 2016, through May 12, 2017 ("Second Period"). Additionally, final approval of compensation is requested for the period of April 10, 2015, through June 30, 2016 ("First Period"). The order of the court approving employment of Applicant was entered on April 30, 2015. Dckt. 44. Applicant requests fees in the amount of $61,490.00 and costs in the amount of $2,886.92.

JUNE 29, 2017 HEARING

At the hearing, the court continued the matter to 10:30 a.m. on July 13, 2017, to allow the Trustee time to review the fee application and for Applicant to file supplemental pleadings providing a task billing of services. Dckt. 604.

APPLICANT'S SUPPLEMENT

Applicant filed a Supplement on June 30, 2017. Dckt. 606. Applicant has provided a detailed task billing for each of the billed categories, and those categories are discussed later in this ruling with the fees requested by Applicant.

APPLICANT'S REQUEST TO CONTINUE HEARING

On July 7, 2017, Applicant moved for the court to continue the hearing on this matter until 10:30 a.m. on September 7, 2017. Dckt. 612. Applicant reports that the Trustee has contacted Applicant and requested a continuance to allow the Trustee time to conduct the Meeting of Creditors in this case and to familiarize himself with the case history so far.

Applicant concurs with the Trustee that the hearing be continued to 10:30 a.m. on September 7, 2017.

ORDER CONTINUING HEARING

On July 11, 2017, the court entered an order granting Applicant's request to continue the hearing on this Motion. Dckt. 615. The court continued the hearing to 10:30 a.m. on September 7, 2017.

JULY 13, 2017 HEARING

At the July 13, 2017 hearing, the court noted that the matter had been continued by prior order. Dckt. 616.

SEPTEMBER 7, 2017 HEARING

No further pleadings were filed by any parties for the continued hearing.

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 cab 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."). Prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that the services provided by Applicant related to administering the case, handling claims, filing for employment and fees, and preparing a plan and disclosure statement—among other tasks.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 59.3 hours in this category. Applicant moved to sell real properties and moved to abandon real property as well.

Business Operations: Applicant spent 3.5 hours in this category. Applicant communicated with Client regarding numerous matters pertaining to the operation of rental properties and the Estate, including the allowance and payment of claims against the Estate, segregation and use of cash collateral, and performance of duties under the Code.

Case Administration: Applicant spent 68.8 hours in this category. Applicant responded to inquiries and requests for information from the U.S. Trustee; responded to inquiries from and negotiated with various creditors and their agents and attorneys; communicated extensively with successive real estate brokers; communicated with Client and the IRS about processing applications for releases of a federal tax lien; reviewed, filed, and served Monthly Operating Reports; reviewed the U.S. Trustee's motion to convert or dismiss the case; drafted a stipulation to the motion to convert or dismiss; and communicated with successor counsel regarding the case.

Cash Collateral: Applicant spent 11.5 hours in this category. Applicant drafted and filed supplements to the motion, made court appearances, and obtained three court orders authorizing Client to continue to use cash collateral.

Claims Issues: Applicant spent 3.4 hours in this category. Applicant communicated with Client and an accountant regarding claims for priority income taxes and post-petition administrative tax claims.

Employment/Fee Applications: Applicant spent 32.3 hours in this category. Applicant filed an application for interim fees; filed an to employ an accountant; filed an application employ a property manager; filed a motion to withdraw as counsel; filed an application to employ another property manager; filed an application to employ a broker; and filed an application for fees for the accountant.

Plan and Disclosure Statement: Applicant spent 22.3 hours in this category. Applicant drafted updates and revisions to draft disclosure statement and plan of reorganization; updated exhibits to the disclosure statement; and communicated with Client.

Relief from Stay Issues: Applicant spent 3.0 hours in this category. Applicant relates that a portion of the services in this category were more appropriately billed in the "Employment/Compensation of Professionals" category, and another portion should have been billed in that category too.

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**
Blended rate for Anthony Asebedo, Mary Gillis, Jeanne Hutton, and David Meegan	204.1 hours	$350.27	$71,490.11
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$71,490.11

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	$184,357.00	$147,485.60

Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$184,357.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,886.92 pursuant to this Application. Pursuant to prior interim applications, the court has allowed costs of $3,502.62.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Court Filing Fees		$246.40
Postage		$1,765.50
PACER Fees		$14.90
Mileage	$0.50/mile	$97.92
Parking		$18.50
Photocopying	$0.05	$743.70
Total Costs Requested in Application		$2,886.92

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $61,490.00 for its fees incurred for Client. Second and Final Fees in the amount of $61,490.00 and prior Interim Fees in the amount of $184,357.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of $2,886.92 and prior Interim Costs in the amount of $3,502.62 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	$61,490.00
Costs and Expenses	$2,886.92

pursuant to this Application and prior interim fees of $184,357.00 and interim costs of $3,502.62 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 Meegan, Hanschu & Kassenbrock ("Applicant"), Attorney for Lawrence Souza and Judith Souza ("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 Meegan, Hanschu & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:
>
> Meegan, Hanschu & Kassenbrock, Professional employed by Lawrence Souza and Judith Souza
>
> Fees in the amount of $61,490.00
> Expenses in the amount of $2,886.92,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Client.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $184,357.00 and costs of $3,502.62 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 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.

9. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION TO DISMISS ADVERSARY PROCEEDING**
15-9007 **KVD-1**
KATAKIS ET AL V. SINCLAIR **8-2-17 [90]**

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)(1) Motion—Hearing Required. FN.1.

FN.1. Local Bankruptcy Rule 9014-1 (f)(2) expressly provides that it may not be used for motions in adversary proceedings. The Motion does not state that a written opposition must be filed within fourteen days of the hearing as required for Rule 9014-1(f)(1) motions. The court infers that, in light of the subject matter of the Motion, that it is filed pursuant to L.B.R. 9014-1(f)(1).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on August 2, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. Local Bankruptcy Rule 9014-1(f)(1).

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

The Motion to Dismiss Adversary Proceeding is granted, and the adversary proceeding is dismissed.

Plaintiffs Andrew Katakis; California Equity Management Group, Inc.; and New Century Townhomes of Turlock Owners' Association (fka Fox Hollow of Turlock Owners' Association) move the court to dismiss this adversary proceeding determining the dischargeability of debt by Richard Sinclair ("Defendant-Debtor").

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 7041 governs the dismissal of adversary proceedings. The rule incorporates Federal Rule of Civil Procedure 41 and provides that a dismissal must be by court order when a defendant has answered a complaint.

DISCUSSION

Plaintiffs allege that there was a pending state court action for malicious prosecution, and when Defendant-Debtor filed a bankruptcy case, Plaintiffs filed this Adversary Proceeding to determine the dischargeability of the debt asserted in the state court action.

Plaintiffs and the Chapter 7 Trustee in Defendant-Debtor's case determined that resolving several adversary proceedings was in everyone's best interest, and they entered into a settlement on November 15, 2016, that the court approved on January 9, 2017. Pursuant to that settlement, Plaintiffs are required to withdraw Proof of Claim 7-1, dismiss the state court action, and dismiss this Adversary Proceeding.

The claim has been withdrawn, and the state court action has been dismissed. Now, Plaintiffs seek to dismiss this Adversary Proceeding.

No party has filed any pleading to this Motion either objecting to it or seeking to substituted in Plaintiffs' stead. The court treats silence by the non-filing parties as acquiescence to granting the Motion.

The Motion to Dismiss is granted, and Adversary Proceeding 15-09007 is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Adversary Proceeding filed by the Plaintiffs having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss Adversary Proceeding is granted, and Adversary Proceeding 15-09007 is dismissed.

10. **13-90893-E-7** **LYNN MORGAN** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH HEALTHCARE COST CONTAINMENT UNITED ASSOCIATION, INC. AND ICAN BENEFIT GROUP, LLC**
SSA-3 **Martha Lynn Passalaqua** **8-4-17 [48]**

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 Not 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 August 4, 2017. By the court's calculation, 34 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 not been set properly 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 for Approval of Compromise is granted.

Michael McGranahan, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Healthcare Cost Containment United Association, Inc., and iCan Benefit Group LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are claims for wrongful termination, nonpayment of wages, failure to pay all wages due upon discharge, unfair competition, invasion of privacy, and intentional infliction of emotional distress advanced by Lynn Morgan ("Debtor") against her former employer.

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 2002(a)(3) requires a minimum of twenty-one days' notice to be given for a hearing on a motion to approve a compromise. Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run

concurrently. The total minimum days' notice for this Motion was supposed to be thirty-five days; Movant provided thirty-four days, which is one day short of the minimum requirement. The court will *sua sponte* shorten the notice period, however, to thirty-four days in light of no party filing written opposition or appearing at the hearing to oppose the compromise.

PROPOSED SETTLEMENT

Movant and Settlor have resolved these claims and disputes, subject to approval by the court 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 Exhibit 1 in support of the Motion, Dckt. 50):

A. Payment of $91,250.00 to the Chapter 7 Trustee's Special Counsel's trust account, Katherine R. Boyd, Inc.

B. The forgoing payment, approval of the settlement by the Bankruptcy Court and negotiation of the funds, shall result in the dismissal of the outstanding federal court civil suit (*Lynn Morgan v. Healthcare Cost Containment United Association, Inc., Ican Benefit Group LLC*, Case No. 1:14-cv-01721-MCE-SMS, United States District Court, Eastern District of California) with prejudice; however it shall not affect what is referenced in the settlement agreement as the "Florida Action" and the "WCAB Action," which are excluded from this settlement. FN.1.

FN.1. The court notes that Movant stated incorrectly in the Motion and the Notice of Hearing that the case number was 2:14-at-01366. The case number agreed to by the parties in the settlement agreement is 1:14-cv-01721-MCE-SMS. Exhibit 1, Dckt. 50 at 2.

C. Each party to the agreement will bear that party's own fees and costs.

D. Debtor shall be responsible for and assumes any and all tax consequences and liability incurred as a result of any payment distributed to her personally by order of the United States Bankruptcy Court in this case.

E. The terms and conditions of the settlement are governed by California law.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant notes that the federal court litigation between the parties had been pending since August 2014, but he does not address whether he expected that litigation to be successful.

Movant argues that this bankruptcy case will be a success because it had been insolvent up to this proposed settlement.

Difficulties in Collection

Movant argues that the settling parties are viable entities, with the majority of settlement funds coming from insurance.

Expense, Inconvenience, and Delay of Continued Litigation

The subject litigation matter referenced is complex, has entailed significant attorney time and litigation expenses to date. It would require more significant expenditure of attorney time and legal expenses for funding if not settled.

Paramount Interest of Creditors

Movant argues that the settlement will lead to faster and more efficient administration of this case.

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 provides funding to a case that was otherwise closed and insolvent. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the 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 Movant and Healthcare Cost Containment United Association, Inc., and iCan Benefit Group LLC ("Settlor") 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 Exhibit 1 in support of the Motion (Dckt. 50).

11. **13-90893-E-7** **LYNN MORGAN** **MOTION FOR COMPENSATION FOR**
SSA-4 **Martha Lynn Passalaqua** **KATHERINE R. BOYD, SPECIAL COUNSEL**
8-4-17 [55]

Tentative Ruling: The Motion For Compensation 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).

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.

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

Sufficient Notice Not 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 August 4, 2017. By the court's calculation, 34 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).

The Motion for Allowance of Professional Fees has not been set properly 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 hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on September 28, 2017.

Law Office of Katherine R. Boyd, Inc., a Professional Law Corporation and Curtis Legal Group, as special counsel ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), make a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 22, 2012, through July 27, 2017. The order of the court approving employment of Applicant was entered on August 12, 2016. Dckt. 39. Applicant requests fees in the amount of $22,121.50 and costs in the amount of $666.85.

INSUFFICIENT NOTICE PROVIDED

Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice to be given for a hearing on a motion for allowance of professional fees. Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those time periods do not run concurrently. The total minimum days' notice for this Motion was supposed to be thirty-five days; Applicant provided thirty-four days, which is one day short of the minimum requirement. The court will *sua sponte* shorten the notice period, however, to thirty-four days in light of no party filing written opposition or appearing at the hearing to oppose the compromise.

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—
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> (A) the time spent on such services;
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> (B) the rates charged for such services;
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> (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;
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> (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 cab 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 litigating a lawsuit in federal court for Lynn Morgan ("Debtor"). The court finds the services were beneficial to Client and the Estate and were reasonable.

NO TASK BILLING PROVIDED FOR COURT'S REVIEW

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

billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

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

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

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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.
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> The Motion for Allowance of Professional Fees filed by Law Office of Katherine R. Boyd, Inc., a Professional Law Corporation and Curtis Legal Group ("Applicant"), special counsel for Michael McGranahan ("the Chapter 7 Trustee") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on September 28, 2017. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.