

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 26, 2017, at 10:30 a.m.

1.	<u>16-23600</u>-E-7 DNL-8	TODD SHAW Cindy Lee Hill	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEES ATTORNEY(S) 9-20-17 [122]
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Final Ruling: No appearance at the October 26, 2017 hearing is required.

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, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2017. By the court's calculation, 36 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 been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.
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Desmond, Nolan, Livaich & Cunningham, the Attorney (“Applicant”) for Alan Fukushima, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 12, 2016, through September 1, 2017. The order of the court approving employment of Applicant was entered on October 12, 2016. Dckt. 46. Applicant requests fees in the amount of \$15,000.00 and costs in the amount of \$1,067.84.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include reviewing Todd Shaw’s (“Debtor”) voluntary petition, schedules, and Statement of Financial Affairs; preparing employment and fee applications; attending mediation sessions; preparing motions and supporting documents; obtaining orders approving settlements; and communicating with the Chapter 7 Trustee and relevant counsel throughout the proceeding. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Assisted Trustee in Investigation of Estate Assets: Applicant spent 19.9 hours in this category. Applicant reviewed the petition, schedules, and Statement of Financial Affairs; advised Client regarding investigation of estate assets; prepared an application to issue discovery, obtained order approving application, took Debtor’s examination, and reviewed documents provided by Debtor; and communicated with Client and Debtor’s counsel regarding matters.

Advised Trustee in Administration of the State Court Case and Debtor's Claim of Exemption Regarding Same: Applicant spent 14.8 hours in this category. Applicant communicated with Debtor's counsel and Client regarding Debtor's interest in a state court case; attended mediation with Client, Debtor, and defendants in state court; prepared a motion and supporting documents to approve settlement in state court; prepared motion and supporting documents to approve settlement between Client and Debtor; and obtained orders approving the settlements.

Advised Trustee in Administration and Settlement of Claims Regarding the Fleetwood: Applicant spent 19.7 hours in this category. Applicant communicated with Greg Hay regarding his and Debtor's claims to a Fleetwood and advised Client; prepared settlement agreement resolving Hay's claim; prepared motion and supporting documents to approve Client's settlement with Hay; communicated with escrow regarding transfer of estate's interest in Fleetwood to Hay; and communicated with Client, Debtor's counsel, and Hay about the matters.

Employment and Fee Applications: Applicant spent 13.7 hours in this category. Applicant prepared an application to employ himself, to employ counsel in a state court case, to compensate the state court counsel, and to compensate himself.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Luke Hendrix	59.6 hours	\$325.00	\$19,370.00
Nicholas Kohlmeyer	2.2 hours	\$200.00	\$440.00
Anne Badasci	4.0 hours	\$100.00	\$400.00
Courier	2.3 hours	\$50.00	\$115.00
Total Fees for Period of Application			\$20,325.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,067.84 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
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Photocopies	\$0.10	\$227.90
Postage		\$268.28
Advances (recording/filing fees)		\$571.66
Total Costs Requested in Application		\$1,067.84

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$15,000.00 for fees, in addition to \$1,067.84 in expenses incurred for Client. First and Final Fees and Costs in the amount of \$16,067.84 are approved pursuant 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	\$15,000.00
Costs and Expenses	\$1,067.84

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

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham (“Applicant”), Attorney for Alan Fukushima, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$15,000.00
Expenses in the amount of \$1,067.84,

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

IT IS FURTHER ORDERED that the 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. [11-27845-E-11](#) **IVAN/MARETTA LEE**
15-2194

**LEE ET AL V. CITY OF
SACRAMENTO COMMUNITY**

**CONTINUED PRE-TRIAL
CONFERENCE RE: AMENDED
COMPLAINT FOR INJUNCTIVE RELIEF;
DECLARATORY JUDGMENT;
VIOLATION OF THE CONFIRMED
PLAN; AND FRAUDULENT TRANSFER
OF SURRENDERED PROPERTY AND
LAWSUIT OF SURRENDERED
PROPERTY**
3-14-16 [[92](#)]

Final Ruling: No appearance at the October 24, 2017 Pre-Trial Conference is required.

Plaintiff's Atty: Raymond E. Willis

Defendant's Atty:

Tim G. Ceperley [Bank of America, N.A.]

Beau E. Parkhurst [City of Sacramento; City of Sacramento Community
Development Department]

Gregory K. Jones [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]/*dismissed by
stipulation on 2/11/16 [Dckt 68]*

B. Ben Mohandesi [New Penn Financial, LLC dba Shellpoint Mortgage
Servicing]/*dismissed by stipulation 2/24/16 [Dckt 87]*

Nature of Action:

Injunctive relief - other

Declaratory judgment

<p>The Status Conference is concluded, the court having entered a judgment in this adversary proceeding. This matter is removed from the Calendar.</p>

Notes:

Continued from 5/31/17. Defendants granted leave to file dispositive motions, notwithstanding prior deadlines for such motions set by the court.

[BMV-4] Motion to Dismiss Defendants City of Sacramento Community Development Department, Housing and Dangerous Building Division and City of Sacramento's Counterclaim Without Prejudice filed 7/27/17 [Dckt 162], set for hearing 9/21/17 at 11:00 a.m.; Order granting and dismissing Defendants' counterclaim filed 9/26/17 [Dckt 198]

[BMV-5] Defendants' Motion for Summary Judgment filed 7/27/17 [Dckt 166], set for hearing 9/21/17 at 11:00 a.m.; Order granting and entering judgment for defendants Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., against Ivan Lee and Maretta Lee filed 9/26/17 [Dckt 196]

[BMV-6] Ex Parte Motion to Continue Pre-Trial Conference filed 8/29/17 [Dckt 176]; Order granting and continuing pre-trial conference to 10/25/17 at 10:30 a.m. filed 8/30/17 [Dckt 178]; Amended order granting and continuing pre-trial conference to 10/25/17 at 10:30 a.m. filed 9/25/17 [Dckt 189]