

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 9, 2017, at 10:30 a.m.

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1. [17-90104-E-7](#) **KELLY/JUDITH OLIVER** **MOTION FOR COMPENSATION BY THE**
SCB-3 **Jessica Dorn** **LAW OFFICE OF SCHNEWEIS-COE &**
 BAKKEN, LLP FOR LORIS L. BAKKEN,
 TRUSTEE’S ATTORNEY(S)
 9-26-17 [60]

Final Ruling: No appearance at the November 9, 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, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2017. By the court’s calculation, 44 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.

Schneweis-Coe & Bakken, LLP, the Attorney (“Applicant”) for Gary Farrar, 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 May 30, 2017, through November 9, 2017. The order of the court approving employment of Applicant was entered on June 5, 2017. Dckt. 54. Applicant requests fees in the amount of \$2,220.00 and costs in the amount of \$60.13.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization

to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration and assisting Client with recovering property of the Estate. The Estate has \$12,500.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.5 hours in this category. Applicant prepared an employment application, and this Application for fees and costs.

Recover Property of the Estate: Applicant spent 3.9 hours in this category. Applicant contacted a decedent’s counsel regarding an interest in property, discussed an inheritance with the Chapter 7 Debtor’s counsel, and negotiated for the turnover of non-exempt funds sufficient to pay all unsecured claims in this case.

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
Loris Bakken, attorney	7.4 hours	\$300.00	\$2,220.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$2,220.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$60.13 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$33.53
Copying	\$0.10/page	\$26.60
		<u>\$0.00</u>
Total Costs Requested in Application		\$60.13

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,220.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$60.13 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	\$2,220.00
Costs and Expenses	\$60.13

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 Schneweis-Coe & Bakken, LLP (“Applicant”), Attorney for Gary Farrar, 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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,220.00
Expenses in the amount of \$60.13,

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 20, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Order Closing Case Without Abandoning Assets to Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Order Closing Case Without Abandoning Assets to Debtor is denied without prejudice.

JoAnn Teem (“Debtor”) received a discharge in this case on March 16, 2015. Dckt. 26. On April 20, 2017, Michael McGranahan, the Chapter 7 Trustee, filed this Motion for Order Closing Case Without Abandoning Assets to Debtor pursuant to 11 U.S.C. § 554(c) on the basis that the Estate holds an interest in shares of a corporation for which the Trustee has sought offers, but no offers have materialized. The Chapter 7 Trustee believes that the Estate’s interest has significant value, but it is not liquid at this time.

The court has reviewed the grounds asserted by the Chapter 7 Trustee, responses, and prior proceedings in the Civil Minutes for those prior proceedings in this Contested Matter. The court does not repeat them here.

The Chapter 7 Trustee confirmed in his November 3, 2017 Report to the Court that the parties have now executed a settlement agreement resolving these disputes. Report, Dckt. 85. The Chapter 7 Trustee also requests that the court deny the present motion without prejudice so that the parties can now concentrate of prosecuting the motion(s) relating to the settlement and conclude this matter.

The court accepts the Chapter 7 Trustee's Report and Request as a consent to dismissal without prejudice of this Motion. Said request consistent with the oppositions to the Motion (see Pinasco Opposition, stating Varni Corporation offer to purchase assets; Dckt. 71) as presented at prior hearings.

The court grants the Chapter 7 Trustee's request, and the Motion is denied without prejudice.

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 Order Closing Case Without Abandoning Assets to Debtor filed by Michael McGranahan, the Chapter 7 Trustee, having been presented to the court, the Chapter 7 Trustee confirming in his November 3, 2017 Report to the Court that the parties have now executed a settlement agreement resolving these disputes (Report, Dckt. 85), the Chapter 7 Trustee also requesting that the court deny the present Motion without prejudice so that the parties can now concentrate on prosecuting the motion(s) relating to the settlement and conclude this matter, such denial being consistent with the Oppositions to the Motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3.

[17-90124-E-7](#)
TPH-3

ROBERT MCCLAUGHERTY
Thomas Hogan

**MOTION TO AVOID LIEN OF PREMIER
AMERICA CREDIT UNION**
10-25-17 [[38](#)]

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 25, 2017. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien 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 to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Premier America Credit Union (“Creditor”) against property of Robert McClougherty (“Debtor”) commonly known as 3616 Chant Drive, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$46,322.12. An abstract of judgment was recorded with Stanislaus County on March 18, 2009, that encumbers the Property.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$415,000.00 as of the petition date. The unavoidable consensual liens that total \$239,815.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of \$185.00 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert McClaugherty ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Premier America Credit Union, California Superior Court for Stanislaus County Case No. LC072704, recorded on March 18, 2009, Document No. 2009-0026691-00, with the Stanislaus County Recorder, against the real property commonly known as 3616 Chant Drive, Modesto, California, is avoided in its entirety for all amounts in excess of \$185.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4.

[15-90943-E-7](#)
PGM-2

ANNE GAGNON
Peter Macaluso

CONTINUED MOTION TO REDEEM
9-12-17 [\[76\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 13, 2017. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Redeem has been dismissed without prejudice by prior order of the court, and the matter is removed from the calendar.

Anne Gagnon (“Debtor”) seeks to redeem a 2010 Hyundai Genesis (“Property”) from the claim of Ally Bank (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor’s exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Anna Gagnon. Debtor seeks to value the Property at a replacement value of \$5,400.00 as of the Motion’s filing date, not the petition date as specified by 11 U.S.C. § 506(a)(2).

Stipulation to Dismiss Without Prejudice

On November 7, 2017, the parties filed a Stipulation for Debtor to “withdraw” the Motion. The court interprets that as a stipulation for the dismissal of the Motion without prejudice. The court has, by prior order, dismissed this Motion without prejudice.

5. [17-90251-E-7](#) **WAREN/BARBARA SMITH** **MOTION FOR COMPENSATION BY THE**
[SCB-4](#) **Patrick Greenwell** **LAW OFFICE OF SCHNEWEIS-COE AND**
 BAKKEN, LLP FOR LORIS L. BAKKEN,
 TRUSTEE’S ATTORNEY(S)
 9-26-17 [39]

Final Ruling: No appearance at the November 9, 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, and Office of the United States Trustee on September 26, 2017. By the court’s calculation, 44 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.

Schneweis-Coe & Bakken, LLP, the Attorney (“Applicant”) for Gary Farrar, 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 May 30, 2017, through November 9, 2017. The order of the court approving employment of Applicant was entered on June 2, 2017. Dckt. 16. Applicant requests fees in the amount of \$3,675.00 and costs in the amount of \$48.80.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration and also preparing and filing applications to employ a realtor and to sell the real property for the bankruptcy estate. The Estate has \$22,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.0 hours in this category. Applicant prepared its own fee agreement and employment application and also prepared its fee application. In addition, Applicant anticipates attending the hearing on the fee application by telephone.

Employment of Realtor and Sale of Real Property: Applicant spent 10.0 hours in this category. Applicant prepared and filed the application to employ a realtor to value, market, and sell real property for the estate. In addition, Applicant communicated with the hired realtor about his employment and terms of the bidding process. Finally, Applicant reviewed the Offer and Counteroffer for sale of the real property, and prepared and filed a motion to sell real property. On August 24, 2017, Applicant appeared in person at the hearing on the motion to sell.

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
Loris Bakken, attorney	11.5 hours	\$300.00	\$3,450.00
Loris Bakken, attorney	1.5 hours	\$150.00	\$225.00
Total Fees for Period of Application			\$3,675.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$48.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$27.30
Copying	\$0.10 per page	\$21.50
Total Costs Requested in Application		\$48.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,675.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$48.80 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	\$3,6750.00
Costs and Expenses	\$48.80

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 Schneweis-Coe & Bakken, LLP (“Applicant”), Attorney for Gary Farrar, 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 Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee, is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$3,675.00
Expenses in the amount of \$48.80,

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.

6. [02-94454-E-7](#) LUANN SELECKY
SSA-2 John Kyle

**MOTION FOR INSPECTION, TURNOVER
OF PROPERTY OF THE ESTATE, AND
REIMBURSEMENT OF FEES AND COSTS
10-3-17 [20]**

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, and Office of the United States Trustee on October 3, 2017. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

The Motion for Turnover 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 hearing on the Motion for Turnover is continued to 10:30 a.m. on November 30, 2017.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 1037 Westmont Terrace, Modesto, California ("Property") and for turnover of a demand note in favor of Luann Selecky ("Debtor") executed by her former husband Stephen Goudreau in the principal amount of \$500,000.00 ("Note").

The grounds for relief as stated with particularity in the Motion (Federal Rule of Bankruptcy Procedure 9013) include the following:

- A. Based upon information provided to Movant and working with the Office of the United States Trustee, Movant has requested this bankruptcy case be reopened so that he may pursue the recovery of assets of the estate that are alleged not to have been previously disclosed by Debtor.

- B. Based upon the information provided by Debtor in the Schedules, the First Meeting of Creditors, and in the bankruptcy case, there appeared to be no assets to be administered by Movant, and the case was noticed as a “No Asset” case. Motion, FN. 1; Dckt. 20.
- C. It is alleged that the Debtor owned real property commonly known as 1037 Westmont Terrace, Modesto, California, when this bankruptcy case was commenced, but such “Real Property” was not disclosed in Debtor’s bankruptcy case. *Id.*, ¶ 3, Dckt. 20.
- D. It is alleged that Debtor held a demand note, with Debtor as payee, in the principal amount of \$500,000.00 that was executed by her former husband. *Id.*, ¶ 4.
- E. Debtor has not turned over the Property and the Note to Movant.

In his Declaration, Movant provides a discussion of the investigation undertaken and what he and his agents have discovered. Movant testifies that he is asserting an interest of the bankruptcy estate in the Property pursuant to an Interfamily Transfer and Dissolution on or about September 6, 2001. Declaration ¶ 4, Dckt. 22. (It is not clear whether that is referencing a court order, contract, marital settlement agreement, or other type of document transferring legal, equitable, or other rights in the Property to Debtor. However, this appears to be language used in connection with a deed issued by one spouse to the other in connection with the dissolution of a marriage.) Movant reports that the deed for the Property was not recorded until July 6, 2015. *Id.*

Copies of the deed or other documents are not provided. Movant has filed a copy of a LexisNexis Property Deed/Mortgage Report as Exhibit 1 in support of the Motion. Dckt. 24. That third-party information does not constitute personal knowledge testimony by Movant, nor does it appear to be a certified county real property record. While the information in Exhibit 1 may be several steps removed from personal knowledge testimony or an authenticated document (Federal Rule of Evidence 601, 602, 901 et seq.), it does provide some general information, which if true, can be easily and properly documented for the court.

The LexisNexis Property Deed/Mortgage Report includes the following information relating to the Property and to Debtor:

- A. Debtor acquired the Property by a “Contract” dated September 6, 2001. Exhibit 1, p. 2 of 4; Dckt. 24.
- B. The “Contract” was recorded on July 6, 2015. *Id.*
- C. The “Seller” of the Real Property was Stephen Goudreau, whom Movant identifies as Debtor’s ex-husband. *Id.*
- D. There is a non-purchase money mortgage for a \$45,000.00 obligation of Debtor as “Borrower” based on a “Contract” dated February 21, 2016, and recorded on April 5, 2017, naming “Stephen Goudreau,” for which Debtor is listed as the owner of the Property. *Id.*, p. 1 of 4.

Movant notes in his Declaration that in the Original Chapter 7 Schedules filed, Debtor lists her residence as the Property, but on Schedule A she states under penalty of perjury that she has no interests in any real property. Declaration ¶ 6, Dckt. 22.

The court's review of the Petition discloses that Debtor stated her address to be the Property. Dckt. 1 at 1. On Schedule A, Debtor stated under penalty of perjury in response to the required disclosure of any interests in real property that she had "None." *Id.* at 5.

On Schedule I, Debtor stated that she is single and has income of \$750.00 per month. *Id.* at 14. On Schedule J, Debtor stated that she had no rent or mortgage expense, no utilities expense, and no home maintenance expense. *Id.* at 15. Debtor did state that for her income of \$750.00 per month, she had an expense of \$150.00 per month identified as "Set aside for taxes." *Id.*

On the Statement of Financial Affairs, Debtor affirmatively stated that she has not been a party of any suits or proceedings in the one year prior to the November 26, 2002 commencement of her bankruptcy case. *Id.* at 17. In response to Question 15 on the Statement of Financial Affairs, Debtor stated that she has not lived at any address other than the Property during the two years prior to the commencement of the bankruptcy case. *Id.* at 19.

On Schedule B, Debtor did not list any interest in any promissory notes (\$500,000.00 or other amount) or any right to payment of monies (\$500,000.00 or other amount) from any other person. *Id.* at 6–7.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver undisclosed property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to Movant.

Though this case was previously closed, undisclosed assets have not been "administered" by Movant and are not abandoned back to Debtor as provided in 11 U.S.C. §§ 350, 554(c) & (d). *First Nat'l Bank v. Lasater*, 196 U.S. 115, 117 (1905); *Pace v. Battley (In re Pace)*, No. 92-36787, 1994 U.S. App. LEXIS 3891 (9th Cir. Feb. 24, 1994); *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524 (8th Cir. 1991); *Stein v. United Artists Corp.*, 691 F.2d 885, 888 (9th Cir. 1982); *In re Dunning Bros. Co.*, 410 B.R. 877, 879 (Bankr. E.D. Cal. 2009). *See also* 5 COLLIER ON BANKRUPTCY ¶ 554.03 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.), discussing this point of law:

Abandonment presupposes knowledge. There can, as a rule, therefore be no abandonment by mere operation of law of property that was not listed in the debtor's schedules or otherwise disclosed to the creditors. This principle is recognized in section 554(c) which provides that, unless the court orders otherwise, property of the estate that is neither abandoned nor administered in the case remains property of the estate. Likewise, property that is improperly or ineffectively abandoned remains property of the estate pursuant to section 554(d).

Thus, if property was not properly scheduled by the debtor, it is not automatically abandoned at the end of the case. Section 554(c) provides for automatic abandonment only for property that was "scheduled under section 521(1)." Even after the case is closed, the estate continues to retain its interest in unscheduled property. However, if the case is dismissed, all estate property, whether disclosed or not disclosed by the debtor, reverts in the debtor.

While remaining property of the bankruptcy estate, the property remains protected by the automatic stay (in addition to the debtor not having legal or equitable title to the undisclosed real or personal property after the closing of the bankruptcy case) as provided by 11 U.S.C. § 362(a)(2)–(4) for property of the bankruptcy estate. The termination of stay provisions of 11 U.S.C. § 362(c)(1) upon the closing of a case only applies once the real or personal property is no longer property of the bankruptcy estate.

Setting Further Hearing and Supplemental Pleadings

Here, Movant argues that the Property and the Note were not disclosed during Debtor's case, even though they should have been, and they have not been administered for the benefit of creditors. Movant argues that the Property is owned by Debtor and was owned by her when she filed this case on November 26, 2002. After she did not disclose the Property, though, the case was closed as being a "no asset" case. Additionally, Movant argues that the Note is owned and controlled by Debtor and owned by her when the case was filed without being disclosed.

In light of a turnover order being in the nature of a mandatory injunction, requiring Debtor to affirmatively take action, and the failure to comply with the turnover order subjecting Debtor to the corrective contempt powers of this court and the punitive contempt powers of the District Court, the court requires there to be credible, properly authenticated evidence presented. While the court does not believe that Movant would knowingly present inaccurate information, if the court is going to issue an order from which contempt sanctions could be issued, it will be based on clear evidence presented to the court.

To the extent that Debtor is in possession of property of the bankruptcy estate while this matter is being adjudicated, Debtor is subject to the bankruptcy laws and is clearly on notice of the asserted interests and rights of the bankruptcy estate and of Movant. Debtor is aware of the automatic stay which is just that—automatic, with no other order of the court required. Violations of the automatic stay likewise can be the basis for contempt proceedings in and of themselves.

Therefore, the court issues a scheduling order for a further hearing, setting the following dates and deadlines:

- A. Movant shall file supplemental pleadings, including credible and admissible evidence as provided under the Federal Rules of Evidence, on or before November 13, 2017.
- B. Opposition, if any, including credible and admissible evidence as provided under the Federal Rules of Evidence, shall be filed and served on or before November 23, 2017, Debtor having been served with the original Motion and supporting evidence on October 3, 2017.
- C. The hearing is continued to 10:30 a.m. on November 30, 2017.

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 Turnover of Property 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 hearing on the Motion for Turnover of Property is continued to 10:30 a.m. on November 30, 2017.

IT IS FURTHER ORDERED that:

- A. Movant shall file supplemental pleadings, including credible and admissible evidence as provided under the Federal Rules of Evidence, on or before November 13, 2017.

- B. Opposition, if any, including credible and admissible evidence as provided under the Federal Rules of Evidence, shall be filed and served on or before November 23, 2017, Debtor having been served with the original Motion and supporting evidence on October 3, 2017.

- C. The hearing is continued to 10:30 a.m. on November 30, 2017

As stated in the Civil Minutes for the November 9, 2017 initial hearing on this Motion, the continuance of this hearing does not limit or alter any existing rights of the bankruptcy estate to property of the estate or the automatic stay as applied to property of the bankruptcy estate. 11 U.S.C. §§ 350, 554(c)–(d), 362(a)(2)–(4), 362(c)(1); *First Nat’l Bank v. Lasater*, 196 U.S. 115, 117 (1905); *Pace v. Battley (In re Pace)*, No. 92-36787, 1994 U.S. App. LEXIS 3891 (9th Cir. Feb. 24, 1994); *Vreugdenhill v. Navistar Int’l Transp. Corp.*, 950 F.2d 524 (8th Cir. 1991); *Stein v. United Artists Corp.*, 691 F.2d 885, 888 (9th Cir. 1982); *In re Dunning Bros. Co.*, 410 B.R. 877, 879 (Bankr. E.D. Cal. 2009); 5 COLLIER ON BANKRUPTCY ¶ 554.03 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Such rights, interests, and stay occur by operation of law, and the obligations of a debtor or third party in possession of property of the bankruptcy estate thereunder, do not arise and are not dependant on the issuance of an order by this court for a “turnover.”

7. [10-94960-E-7](#) **GUADALUPE CAMPOS**
HCS-3 **Thomas Gillis**

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF HERUM, CRABTREE,
SUNTAG FOR DANA A. SUNTAG,
TRUSTEE'S ATTORNEY(S)**
10-5-17 [45]

Final Ruling: No appearance at the November 9, 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, and Office of the United States Trustee on October 5, 2017. By the court's calculation, 35 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.

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Gary Farrar, 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 January 3, 2017, through November 9, 2017. The order of the court approving employment of Applicant was entered on February 2, 2017. Dckt. 35. Applicant requests fees in the amount of \$14,480.50 and costs in the amount of \$33.09.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration and prosecuting and settling adversary proceedings seeking to recover from alleged fraudulent transfers. The Estate has \$36,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 14.4 hours in this category. Applicant prepared an employment application, provided advice to Client about fraudulent transfers, assisted client in re-opening this case, communicated with Client and the debtor’s counsel, and prepared this Application for compensation.

Adversary Proceedings: Applicant spent 56.3 hours in this category. Applicant investigated allegations by the debtor’s former husband that the debtor had fraudulently transferred property, analyzed whether an adversary proceeding was appropriate, filed a complaint, negotiated a settlement, filed a motion to approve the settlement, and filed a stipulation to dismiss the adversary proceeding when the debtor paid. The settlement generated the \$36,000.00 of monies now in the bankruptcy estate. The settlement resulted in the Trustee obtaining proceeds to pay all of Debtor’s creditors in full and fund the administrative expenses. Civil Minutes, Dckt. 42.

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
Dana Suntag, attorney	12.4 hours	\$345.00	\$4,278.00
Benjamin Codog, attorney	58.3 hours	\$175.00	\$10,202.50

	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$14,480.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$33.09 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10/page	\$13.00
Postage		\$20.09
		\$0.00
		\$0.00
Total Costs Requested in Application		\$33.09

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$14,480.50 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

First and Final Costs in the amount of \$33.09 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	\$14,480.50
Costs and Expenses	\$33.09

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 Herum\Crabtree\Suntag (“Applicant”), Attorney for Gary Farrar, 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$14,480.50
Expenses in the amount of \$33.09,

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.

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$23,903.00 on Original Schedule C. Dckt. 1 at 16.

Assuming nothing has been paid on Creditor’s judgment, interest has accrued at the legal rate of 10% per annum since April 12, 2011. The bankruptcy case was filed in June 12, 2015, four years and two months ago, during which time \$2,429.72 in interest would accrue. (Estimated on \$5,831.35 judgment x 10% per annum = \$583.13 / 12 = \$48.59 per month x 50 months (April 12, 2011–June 12, 2015) = \$2,429.50 interest).

Including the presumed unpaid pre-petition statutory post-judgment interest, the total claim would be \$8,260.85.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is sufficient equity to support the judicial lien.

Fair Market Value.....	\$259,885.00
Consensual Senior Lien.....	(\$212,079.00)
Exemption.....	(\$ 23,903.00)
Judgment Lien.....	<u>(\$ 8,260.85)</u>

(Impairment)/Excess Value by/for Judgment Lien.....\$15,642.15

Applying the formula, there would be additional equity of \$15,642.15 after subtracting the consensual unavoidable liens, Debtor’s exemption, and the judicial lien amount (including all projected post-judgment interest) from the Property’s value. Therefore, the fixing of the judicial lien does not impair Debtor’s exemption of the real property. FN.1.

FN.1. Debtor elected to use the “special” bankruptcy exemptions provided under California law, California Code of Civil Procedure § 704.130(b). As of the June 12, 2015 filing of this bankruptcy case, California Code of Civil Procedure § 704.130(b)(1) allows for \$24,060.00 for a homestead exemption, and in § 704.130(b)(5) \$1,280.00 for the “wildcard” exemption. Though Debtor claimed a slightly lower amount for the homestead exemption and only \$800.28 of the wildcard exemption (Schedule C, Dckt. 1 at 16), even if the court were to assume Debtor would amend Schedule C to state the maximum amounts under these two exemptions, there would still be \$14,205.15 in value in the Property after Creditor’s judgment lien, all other liens, and Debtor’s maximum exemptions.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Richard Gonzales and Sandra Gonzales (“Debtor”) having been presented to the

Fees are requested for the period March 19, 2012, through November 9, 2017. The order of the court approving employment of Applicant was entered on April 29, 2012. Dckt. 960. Applicant requests fees in the amount of \$33,570.25 and costs in the amount of \$1,891.61.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

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

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization

to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include providing legal advice and services to Client regarding case administration, recovery of property, investigation and analysis of funds received, research involving environmental contamination issues, and claims issues. The Estate has \$146,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 20.00 hours in this category. Applicant prepared employment applications for itself and for a certified public accountant, reviewed schedules, communicated with counsel, investigated the sale of a judgment lien, communicated with Client, and prepared fee applications.

Recovery of Property of the Estate: Applicant spent 14.00 hours in this category. Applicant requested turnover of funds from a Rabobank account, sent a demand letter to a debtor, negotiated for the turn over of funds, contacted the bank about a discrepancy, settled with a debtor, and learned that there was a plan in a Chapter 13 case that provided nothing to unsecured claims.

Legal Analysis and Advice About Special Counsel’s Post-Petition Service Without Court Approval: Applicant spent 12.40 hours in this category. Applicant learned that Ms. Leong had been performing collection services for the Chapter 11 debtor, even receiving fees, without court authorization,

determined that she was not entitled to compensation, contacted counsel, met with parties, and appeared at a hearing to employ Ms. Leong.

Payment of Environmental Remediation Funds: Applicant spent 26.70 hours in this category. Applicant learned that the debtor had retained HerSchy Environmental Services, Inc., to perform environmental investigation and remediation services at a gasoline station, learned that the service company had applied for hundreds of thousands of dollars, demanded turnover of funds, researched whether payments to the service company were property of the estate, concluded that payments were not property of the estate, and filed a motion to allow payments to be made to HerSchy.

Motion to Establish Chapter 11 Administrative Claims Bar Date: Applicant spent 6.80 hours in this category. Applicant filed a motion to establish an administrative bar date for filing motions for allowance of administrative expense claims, appeared at the hearing, and compiled a list of administrative claimants to serve, and served the court's order.

Environmental Issues and Assignment of Fund Rights: Applicant spent 28.50 hours in this category. Applicant researched the estate's liability for outstanding environmental issues on properties the debtor occupied formerly, researched Client's ability to transfer the debtor's right to clean-up funds to the new owners of property, provided legal advice to Client, corresponded with the State Water Resources Control Board, researched whether the debtor or the estate were responsible for further clean-up, prepared assignment documents, and filed a motion with the court to approve the assignment.

Claims Issues: Applicant spent 7.50 hours in this category. Applicant reviewed approximately fifty claims that had been filed as alleged priority claims, advised Client, and explained how to handle possible payment of administrative expense claims for which there were court orders issued before the case was converted to Chapter 7.

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
Dana Suntag, attorney	0	\$0.00	\$0.00
William Carlson, attorney	0	\$0.00	\$0.00
Loris Bakken, attorney	0	\$0.00	\$0.00
Josh Stevens, attorney	0	\$0.00	\$0.00
Ricardo Aranda, attorney	0	\$0.00	\$0.00
Zoey Merrill, attorney	0	\$0.00	\$0.00

Patrick Larsen, attorney	0	\$0.00	\$0.00
Wendy Locke, attorney	0	\$0.00	\$0.00
Ben Codog, attorney	0	\$0.00	\$0.00
Blaine Cox, attorney	0	\$0.00	\$0.00
Austin Jackson, attorney	0	\$0.00	\$0.00
Deanna Fillon, paralegal	0	\$0.00	\$0.00
Audrey Dutra, paralegal	0	\$0.00	\$0.00
Julie Sanchez, paralegal	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$0.00

Though Applicant has provided its gross time billing records, it has not provided task billing reports or a report identifying the hours billed for the various attorneys and paralegals and their respective billing rates. While all of this data is included in the gross billing records, it is not the court's task to pull this data from five years of billing records, assemble the data, and then present it in support of the Motion.

While such a lack of support would be fatal (or at least require a continued hearing) to such an application, it is not so for this Motion. First, the court notes that this has been a complex case dealing with non-routine bankruptcy issues. Second, the attorneys for Debtor's law firm merged partway through this case, which may have caused the organization of the billing information more challenging. Third, Applicant usually provides such support when requesting attorney's fees in other cases, so this is an aberration. Fourth, the gross billing data is sufficient, For This Motion, for the court to visually scan the work done, billing rates, and professionals providing the services.

Additionally, total fees of \$33,570.25 are reasonable for the services provided, issues addressed, and benefit obtained by the Estate in this case.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,891.61 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$844.13
Copying	\$0.10/page	\$1,047.48
		\$0.00
		\$0.00
Total Costs Requested in Application		\$1,891.61

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$33,570.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$1,891.61 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	\$33,570.25
Costs and Expenses	\$1,891.61

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 Herum\Crabtree\Suntag (“Applicant”), Attorney for Eric Nims, 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$33,570.25
Expenses in the amount of \$1,891.61,

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.