

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 10, 2018, at 10:00 a.m.

1. [16-21585](#)-E-11 AIAD/HODA SAMUEL MOTION TO APPROVE LOAN
Pro Se MODIFICATION
10-2-18 [[1255](#)]
**TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR**

Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, and parties requesting special notice on October 2, 2018. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by JPMorgan Chase Bank, N.A., ("Movant") seeks court approval for Aiad Samuel and Hoda Samuel ("Debtor") to incur post-petition credit. Movant asserts Debtor are in default under the current loan terms and unable to maintain the required monthly payments.

Movant, whose claim the Confirmed Plan of Liquidation provides for in Class 2E, has agreed to a loan modification that will reduce Debtor's mortgage payment. In its Motion, Movant states the modification provides for a new principal balance of \$323,562.08. Dckt. 1255. Movant states the modification further provide the following terms:

Years	Interest Rate	Estimated Monthly Payment
1-5	1.0%	\$818.15
6	2.0%	\$960.10
7	3.0%	\$1,111.41
8	4.0%	\$1,270.78
9 through Maturity	4.625%	\$1,373.49

TRUSTEE'S STATEMENT OF NONOPPOSITION

The Chapter 11 Trustee and Plan Administrator, Scott Sackett ("Trustee"), filed a Statement of Non-Opposition on November 26, 2018. Dckt. 1317. The Trustee notes that the court entered an Order confirming the Trustee's First Amended Plan of Liquidation on June 28, 2018. Order, Dckt. 1246. Trustee notes that while the Order confirming the Amended Plan is pending on appeal, no stay has been ordered and the Amended Plan therefore has gone into effect.

Trustee states that Sections 4.2.5 and 6.3.2 of the Amended Plan provides the Debtors are solely responsible for paying the remaining balance of Movant's claim after the Trustee cures the existing monetary defaults as of October 16, 2018.

Trustee argues the present loan modification eliminates the need for any cure payment and therefore has withheld making the payment.

APPLICABLE LAW

The Federal Rules of Bankruptcy Procedure set the following requirements for the contents and service of a motion to obtain credit:

(c) OBTAINING CREDIT.

(1) Motion; Service.

(A) Motion. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

(B) Contents. The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

...

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

...

FED. R. BANKR. P. 4001(c).

DISCUSSION

Movant here seeks authorization for the Debtor to obtain credit in the form of a loan modification. The modification reamortizes Movant's claim, allowing payments at reduced interest which gradually steps up to 4.65 percent for the remainder of the loan until maturity.

Failure to Provide Authenticated Modification Agreement

The modification agreement filed as Exhibit 1 is not accompanied by any evidence to support a finding that the item is what the proponent claims it is. FED. R. EVID. 901. Movant has not made any argument that the modification agreement is what it is, but merely filed the document.

In reviewing the Motion, Movant does not actually state Exhibit 1 is the modification agreement. The sole reference to Exhibit 1 is Movant's statement, "The basic terms and conditions as set forth in **Exhibit "1"**." Motion, Dckt. 1255 at 2:5-6.

Review of Exhibit 1

Where personal knowledge is not relied on to authenticate a document, the court may consider alternative means of authentication. *Las Vegas Sands, LLC v. Nehme*, 632 F.3d 526, 533 (9th Cir. 2011). Examining the appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances, is one method of identifying or authenticating an item of evidence. FED. R. EVID. 901(b)(4).

Here, the Exhibit header includes the name “CHASE” and includes what appears to be Movant’s trademark symbol. Exhibit 1, Dckt 1258. The Exhibit is titled “MODIFICATION AGREEMENT.” At the beginning of the Exhibit, the following information is provided:

Borrower (“I/We”): Aiad L. Samuel Hoda Samuel

Lender or Servicer (“Lender”): JPMORGAN CHASE BANK, N.A.

Date of Mortgage, deed of trust, or security deed (“Mortgage”) and Note or Line of Credit Agreement
 (“Note”): January 24, 2003

Account: [redacted]

Property Address (“Property”): 5921 Whalers Cove Court
 Elk Grove, CA 95758-0000

Modification Effective Date: **June 1, 2018**

Original Mortgage Amount: \$4000,000.00

Exhibit 1, Dckt. 1258. Under Section C.3. of the modification agreement filed as Exhibit 1, a table providing the same terms discussed in the Motion is included.

Based on the contents of the document and circumstances of the case, the court finds the document filed as “Exhibit 1” is a true and correct copy of the Modification Agreement between Movant and Debtor.

At the hearing, the court addressed the modification being requested with Debtor **XXXXXXXXXXXX**

Requirement to List or Summarize All Material Provisions

The Federal Rules of Bankruptcy Procedure require a motion to obtain credit provide a list or summary within the motion of all the material provisions of the proposed credit agreement and proposed form of order. FED. R. BANKR. P. 4001(c)(1)(B). The material provisions include interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. *Id.*

It is questionable whether Movant met this requirement. The Motion states the new principal amount, interest rate, and estimated monthly payment. Notably missing is the maturity date, which is only

identified in the Motion as “Maturity” at some unspecified time after year 9. In reviewing the unauthenticated modification agreement attached as Exhibit 1, the maturity date is May 1, 2058. Exhibit 1, Dckt. 1257 at p.4.

Furthermore, the modification agreement refers generally to the original mortgage agreement and note as “Loan Documents.” Through this reference, the modification agreement incorporates several provisions of the original loan which are not described or known to the court.

Notwithstanding the failures of counsel, the court is satisfied that the provisions relevant to the determination of this Motion (though not all of the material provisions of the agreement) have been provided. Furthermore, the agreement has been reviewed by the Chapter 11 Trustee who has in his judgement filed non-opposition. The necessary parts of the agreement having been provided, court will waive the defect.

Requirement to Serve Committee of Creditors or 20 Largest Unsecured Claims

The Federal Rules of Bankruptcy Procedure require that a motion to obtain credit be served on the committee of unsecured creditors, or if no committee of unsecured claim holders has been appointed then on the unsecured creditors with the largest 20 claims. FED. R. BANKR. P. 4001(c)(1)(C).

The Proof of Service filed by Movant indicates service was provided to Debtor, Chapter 11 Trustee, and parties requesting special notice. Debtor, *Pro Se*, filed Debtor’s first Form 104 indicating there are no unsecured claims in this case on March 15, 2016. On May 2, 2016, Debtor filed an Amended Form 104 listing the United States as a creditor with a claim of \$3,000,000, and the Yolo County Treasurer with a clam of \$75,000.00. Dckt. 66.

The United States filed Proof of Claim, No. 25, on September 12, 2016. That claim indicates it is secured in the amount of \$3,153,389.02. No proof of claim has been filed by the Yolo County Treasurer; other claims filed in this case appear to be secured.

Notwithstanding the Debtor likely not correctly listing the creditors with the largest 20 unsecured claims, in reviewing the Amended Plan and Official Registry of Claims in this case, it does appear there are unsecured claim holders in this case.

Despite this shortcoming, in reviewing the agreement provided, there would be no prejudice to any creditors with unsecured claims here. Movant is providing a modification of its loan to assist Debtor, and is not receiving anything more than it would already receive under the terms of its secured claim. Therefore, the court waives this defect as well.

CONCLUSION

The post-petition financing is consistent with the Chapter 11 Plan in this case. The Trustee having filed a Statement of Non Opposition (and the modification being in the nature of a reamortization), the court finds the modification agreement is within Debtor’s ability to provide for directly, in conformity with the Confirmed Amended Plan. There being no objection from other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve Loan Modification filed by JPMorgan Chase Bank, N.A., (“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 court authorizes Aiad Samuel and Hoda Samuel to amend the terms of the loan with JPMorgan Chase Bank, N.A. (“Movant”), which is secured by the real property commonly known as 5921 Whalers Cove Ct, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 1257).

2. [16-21585-E-11](#) AIAD/HODA SAMUEL
[FWP-40](#) Pro Se

**MOTION FOR ADMINISTRATIVE
EXPENSES**
11-9-18 [[1292](#)]

**TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR**

No 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 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is xxxxx.

Scott M. Sackett, the duly appointed Chapter 11 Trustee (“Movant”) requests payment of future expenses that are anticipated to be incurred as administrative expenses. Specifically, the Motion is based upon to-be-determined fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.

DISCUSSION

The Motion (Dckt. 1292) sets forth and states with particularity (Fed.R. Bankr. P. 9013) the following grounds and relief requested from the court:

- A. The asserted administrative expenses are those for “fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.”

Motion, p. 1:21-24; Dckt. 1292.

- B. The amount is not liquidated at this time.
- C. Because the amount is unlimited, the Trustee requests that the court have all otherwise surplus funds of the estate reserved and no distributed to Debtor Hoda Samuel.

Id., p. 1:24-26.

- D. The Trustee was appointed on May 6, 2016.

Id. ¶ 3.

- E. The attorneys of Felderstein, Fitzgerald, Willoughby, and Pascuzzi (“FFWP”) were authorized to be employed as counsel for Trustee effective May 10, 2016.

Id. ¶ 4.

- F. On August 28, 2018, Debtor Hoda Samuel filed a pro se complaint in the United States District Court (“District Court Complaint”). In that action, on October 9, 2018, Debtor Hoda filed a motion to amend the District Court Complaint. Trustee is named as a defendant in the District Court Complaint. Debtor Hoda Samuel has filed a motion to amend the District Court Complaint to add FFWP and attorneys in that firm to a first amended complaint.

Id. ¶¶ 5, 8; and Exhibit 1, Dckt. 1294.

- G. The Trustee requests allowance and payment of all fees, costs, damages, time, or other expenses (collectively defined as “Recoverable Amounts) that the Trustee incurs in responding to the District Court Complaint action. FFWP and its attorneys have filed a similar motion.

Motion ¶ 11, Dckt. 1292.

- H. On September 27, 2018, the court entered its order confirming the Trustee’s First Amended Chapter 11 Plan of Liquidation in this bankruptcy case.

Id. ¶ 6.

- I. No stay pending appeal of the order confirming the First Amended Plan of Liquidation has been issued.

Id. ¶ 7.

- J. Debtor Aiad Samuel filed an attachment to another notice of appeal which makes reference to it supporting an appeal of the bankruptcy judge confirming the First Amended Plan of Liquidation in this bankruptcy case.^{FN. 1}

Id.

FN. 1. A review of the Docket in this case discloses that on November 29, 2018, the Bankruptcy Appellate Panel issued Orders dismissing appeals as untimely, but further states that with respect to the order confirming the Chapter 11 Plan:

Appellant submits that with respect to timeliness, "[t]his issue has now been settled by an Amendment made by Mr. Aiad Samuel to include the proposed Plan in the appeal BAP #18-1252." See Response at 2. A review of the bankruptcy courts docket indicates that on October 11, 2018, Aiad Samuel filed a document stating that he intended to appeal the order denying recusal as well as the plan confirmation order. Bankruptcy Court Docket at 1263 (Document Filed Debtor Aiad Samuel) •1 We disagree. The October 11, 2018 paper does not save these appeals.

1 However, we construe this document as a timely appeal by Mr. Samuel from the September 27, 2018 order confirming the Chapter 11 plan and will open this notice of appeal as BAP Appeal No. EC-18-1318.

BAP Orders Denying Motion for Stay Pending Appeal and Dismissing Appeals (August 8, 2018 Order denying motion to recuse), p. 5; Dckts. 1333 and 1335.

Thus, it appears that the Bankruptcy Appellate Panel indicates that an appeal of the order confirming the plan is pending.

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- K. Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:
1. California Code of Civil Procedure §§ 425.16 et seq. (Anti-SLAPP statute);
 2. Federal Rule of Civil Procedure 11;
 3. The case law setting for the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in bankruptcy cases; and
 4. The court's inherent powers.

Id., p. 3:25-28, 4:1-7.

- L. Because the amount of the administrative expenses has not been determined and the litigation is pending, the Trustee requests that final hearing on this Motion be continued until the District Court Complaint and action relating thereto is completed.

Id., p.3:8-13.

- M. Because the amount could exceed any surplus in the bankruptcy case (which amount is not stated in the Motion), none of the surplus should be disbursed to the Debtors in this case until the final amounts of the requested administrative expenses are determined.

Id., p. 5:14-21.

Whether an administrative expense exists at this point is speculative. The potential for such expense is shown, but such is a “potential” based on future events which the court cannot evaluate as an administrative expense, Anti-SLAPP damages, Rule 11 sanctions from the district court, or damages flowing from unauthorized litigation against an officer or authorized professional representing such officer in a bankruptcy case.

The court cannot “allow” such an expense today. Movant recognizes this in the Motion, noting that at this time administrative expenses are an open issue, the amount of surplus under the Chapter 11 Plan of Liquidation cannot be determined, and therefore requests that the court authorize the Plan Administrator to hold all potential surplus monies generated under the Plan until the final determination of the requested administrative expenses are finally determined.

However, the Plan Administrator cannot disburse purported “surplus monies” in light of the possible administrative expenses.

The Motion does not assert the amount of such potential surplus and how a proper reserve can be determined. Neither of the two Debtors have filed any opposition to the Motion and the request to delay any potential surplus disbursements prior to any required priority administrative expenses be finally determined.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

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 Allowance of Administrative Expense and Delay the Determination and Disbursement of Plan Surplus Proceeds filed by Scott Sackett, the Chapter 11 Trustee and Plan Administrator under the Confirmed Chapter 11 Plan of Liquidation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

3. [16-21585-E-11](#) AIAD/HODA SAMUEL
[FWP-41](#)

**MOTION FOR ADMINISTRATIVE
EXPENSES
11-9-18 [1298]**

**TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR**

No 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 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion for Allowance of Administrative Expenses 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 Allowance of Administrative Expenses is ~~XXXXX~~.

Felderstein Fitzgerald Willoughby & Pascuzzi LLP (“FFWP”), the bankruptcy attorneys for Scott M. Sackett, the duly appointed Chapter 11 Trustee (the “Trustee”) requests payment of administrative expenses that are anticipated to be incurred. Specifically, the Motion is based upon to-be-determined fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.

DISCUSSION

The Motion (Dckt. 1298) sets forth and states with particularity (Fed.R. Bankr. P. 9013) the following grounds and relief requested from the court:

- A. The asserted administrative expenses are those for “fees, costs, damages, time or other expenses projected to be incurred by the Trustee related to the civil complaint filed by Debtor, Hoda Samuel on August 28, 2018 in the United States District Court, Eastern District of California, Sacramento Division, Case No. 18-cv-02343.”

Motion, p. 1:22-25; Dckt. 1292.

- B. The amount is not liquidated at this time.
- C. Because the amount is unlimited, the FFWP requests that the court have all otherwise surplus funds of the estate reserved and no distributed to Debtor Hoda Samuel.

Id., p. 1:25-27.

- D. The Trustee was appointed on May 6, 2016.

Id. ¶ 3.

- E. The attorneys of Felderstein, Fitzgerald, Willoughby, and Pascuzzi (“FFWP”) were authorized to be employed as counsel for Trustee effective May 10, 2016.

Id. ¶ 4.

- F. On August 28, 2018, Debtor Hoda Samuel filed a *pro se* complaint in the United States District Court (“District Court Complaint”). In that action, on October 9, 2018, Debtor Hoda filed a motion to amend the District Court Complaint. Trustee is named as a defendant in the District Court Complaint. Debtor Hoda Samuel has filed a motion to amend the District Court Complaint to add FFWP and attorneys in that firm to a first amended complaint.

Id. ¶¶ 5, 8; and Exhibit 1, Dckt. 1300.

- G. The FFWP requests allowance and payment of all fees, costs, damages, time, or other expenses (collectively defined as “Recoverable Amounts) that FFWP incurs in responding to the District Court Complaint action. The Trustee has filed a similar motion.

Motion ¶ 11, Dckt. 1292.

- H. On September 27, 2018, the court entered its order confirming the Trustee’s First Amended Chapter 11 Plan of Liquidation in this bankruptcy case.

Id. ¶ 6.

- I. No stay pending appeal of the order confirming the First Amended Plan of Liquidation has been issued.

Id. ¶ 7.

- J. Debtor Aiad Samuel filed an attachment to another notice of appeal which makes reference to it supporting an appeal of the bankruptcy judge confirming the First Amended Plan of Liquidation in this bankruptcy case. ^{FN. 1}

Id.

FN. 1. A review of the Docket in this case discloses that on November 29, 2018, the Bankruptcy Appellate Panel issued Orders dismissing appeals as untimely, but further states that with respect to the order confirming the Chapter 11 Plan:

Appellant submits that with respect to timeliness, "[t]his issue has now been settled by an Amendment made by Mr. Aiad Samuel to include the proposed Plan in the appeal BAP #18-1252." See Response at 2. A review of the bankruptcy courts docket indicates that on October 11, 2018, Aiad Samuel filed a document stating that he intended to appeal the order denying recusal as well as the plan confirmation order. Bankruptcy Court Docket at 1263 (Document Filed Debtor Aiad Samuel) •1 We disagree. The October 11, 2018 paper does not save these appeals.

1 However, we construe this document as a timely appeal by Mr. Samuel from the September 27, 2018 order confirming the Chapter 11 plan and will open this notice of appeal as BAP Appeal No. EC-18-1318.

BAP Orders Denying Motion for Stay Pending Appeal and Dismissing Appeals (August 8, 2018 Order denying motion to recuse), p. 5; Dckts. 1333 and 1335.

Thus, it appears that the Bankruptcy Appellate Panel indicates that an appeal of the order confirming the plan is pending.

- K. Several different legal grounds are asserted for the right to recover legal fees and expenses as administrative expenses, including:

1. California Code of Civil Procedure §§ 425.16 et seq. (Anti-SLAPP statute);
2. Federal Rule of Civil Procedure 11;
3. The case law setting for the principles requiring leave before commencing litigation against a receiver or bankruptcy trustee or other officers appointed in bankruptcy cases; and
4. The court's inherent powers.

Id., p. 3:25-28, 4:1-7.

- L. Because the amount of the administrative expenses has not been determined and the litigation is pending, the Trustee requests that final hearing on this Motion be continued until the District Court Complaint and action relating thereto is completed.

Id., p.3:8-13.

- M. Because the amount could exceed any surplus in the bankruptcy case (which amount is not stated in the Motion), none of the surplus should be disbursed to the Debtors in this case until the final amounts of the requested administrative expenses are determined.

Id., p. 4:14-20.

Whether an administrative expense exists at this point is speculative. The potential for such expense is shown, but such is a “potential” based on future events which the court cannot evaluate as an administrative expense, Anti-SLAPP damages, Rule 11 sanctions from the district court, or damages flowing from unauthorized litigation against an officer or authorized professional representing such officer in a bankruptcy case.

The court cannot “allow” such an expense today. FFWP recognizes this in the Motion, noting that at this time since should administrative expenses are an open issue, the amount of surplus under the Chapter 11 Plan of Liquidation cannot be determined, and therefore requests that the court authorize the Plan Administrator to hold all potential surplus monies generated under the Plan until the final determination of the requested administrative expenses are finally determined.

However, the Plan Administrator cannot disburse purported “surplus monies” in light of the possible administrative expenses.

The Motion does not assert the amount of such potential surplus and how a proper reserve can be determined. Neither of the two Debtors have filed any opposition to the Motion and the request to delay any potential surplus disbursements prior to any required priority administrative expenses be finally determined.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

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 Allowance of Administrative Expense filed by Felderstein Fitzgerald Willoughby & Pascuzzi LLP (“Movant”), counsel for the Chapter 11 Trustee and counsel for the Plan Administrator under the Confirmed Chapter 11 Plan of Liquidation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. **By the court's calculation, 31 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).**

With respect to the notice period and the notice actually given, **XXXXXXXXXXXXXXXXXXXX**

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.**

Gonzales & Associates, Inc., the Accountant (“Applicant”) for Scott Sackett, the Chapter 11 | Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 22, 2016, through October 16, 2018. The order of the court approving employment of Applicant was entered on May 10, 2016. Dckt. 1286. Applicant requests fees in the amount of \$18,663.50 and costs in the amount of \$13.65.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen 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 professional'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 professional 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 a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate largely include the preparation of 2016 and 2017 tax returns for the Debtors. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant has not provided a task billing analysis because the services provided were narrow in scope. Rather, Applicant describes the services provides as follows:

1. Preparing and filing extensions for the filing of the federal and state tax returns for each of the Debtors’ taxable estates.
2. Participating in numerous meetings telephone conferences and email exchanges with the Debtors’ tax preparer, Gloria King, to obtain prior years’ tax returns, W-2 forms and other background information needed to prepare the 2016 and 2017 tax returns for the Debtors’ estates.
3. Participating in telephone conferences with the Trustee and the Trustee’s counsel regarding tax issues as they arose.
4. Preparing and filing the Debtors’ estates 2016 and 2017 federal and state tax returns.

Applicant further explains that the preparation of Debtors’ 2016 and 2017 tax returns required extra time and effort due to Debtors’ failure to cooperate.

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
Gene Gonzales (2016)	5	\$330.00	\$1,650.00
Gene Gonzales (2017)	5.3	\$340.00	\$1,802.00
Gene Gonzales (2018)	14.2	\$350.00	\$4,970.00
Lori Cima (2016)	3.7	\$200.00	\$740.00
Lori Cima (2017)	8.9	\$210.00	\$1,869.00
Lori Cima (2018)	35.5	\$215.00	\$7,632.50
Total Fees for Period of Application			\$18,663.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$13.65. pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	[Unspecified]	\$13.65
Total Costs Requested in Application		\$13.65

TRUSTEE'S STATEMENT

Applicant filed Trustee's Statement of Review of Motion on November 9, 2018. Dckt. 1290. The Statement indicates Client, the Chapter 11 Trustee and Plan Administrator, reviewed this Motion and has no objections to the fees and expenses sought herein.

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 \$18,663.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee / Plan Administrator under the confirmed plan from the available Plan Funds in a Chapter 11 case under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of \$13.65 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and costs allowed by the court.

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

Fees	\$18,663.50
Costs and Expenses	\$13.65

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

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

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

The Motion for Allowance of Fees and Expenses filed by Gonzales & Associates, Inc (“Applicant”), Accountant for Scott Sackett, The Chapter 11 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 Gonzales & Associates, Inc. is allowed the following fees and expenses as a professional of the Estate:

Gonzales & Associates, Inc., Professional employed by the Chapter 11 Trustee

Fees in the amount of \$18,663.50
Expenses in the amount of \$13.65,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountants for the Plan Administrator.

The fees and costs pursuant to this Motion, and fees in the amount of \$18,663.50 and costs of \$13.65 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

5. [16-21585](#)-E-11 AIAD/HODA SAMUEL
[FWP-38](#) Pro Se

MOTION FOR COMPENSATION BY
THE LAW OFFICE OF FELDERSTEIN
FITZGERALD WILLOUGHBY &
PASCUZZI LLP FOR JASON E. RIOS,
TRUSTEES ATTORNEY(S)
11-9-18 [[1303](#)]

TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. **By the court's calculation, 31 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).**

With respect to the notice period and the notice actually given, **XXXXXXXXXXXXXXXXXXXX**

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.

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, the Attorney (“Applicant”) for Scott Sackett, the Chapter 11 Trustee (“Client”), makes a Fourth and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 1, 2018, through October 16, 2018. The order of the court approving employment of Applicant was entered on May 19, 2018. Dckt. 95. Applicant requests fees in the amount of \$82,965.00 and costs in the amount of \$2,684.31.

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 work related to an adversary proceeding, appeals, asset disposition, business operations, cash collateral and financing, claims administration and Analysis, fee applications, general case administration, plan/disclosure statement reporting (including monthly, quarterly and other accounting reports). 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.

Adversary Proceeding: Applicant spent 1.2 hours in this category. Applicant's services included reviewing and analyzing the complaint filed by Hoda Samuel in the U.S. District Court against, among others, the Department of Justice, the U.S. Attorney General, the Trustee, and Judge McManus; and participating in telephone conferences regarding same.

Appeals: Applicant spent 4.9 hours in this category. Applicant's services included reviewing notices received from the Court and drafting reports to the Trustee updating him on the status of the Hoda Samuel BAP appeals; reviewing and analyzing notice of submission filed by Hoda Samuel in her appeal of the cash collateral order; reviewing the BAP's memorandum of opinion and notices regarding dismissal of Hoda Samuel appeal of the cash collateral order; reviewing two new notices of appeals filed by H. Samuel to the motions to recuse the bankruptcy judge and the notices of deficiency issued by the BAP regarding same; evaluating next steps for responding to the appeals; reviewing to BAP's order regarding timeliness of the new appeals and addressing issues related to the order including deadlines.

Asset Disposition Motions: Applicant spent 0.2 hours in this category. Applicant's services included reviewing email exchanges regarding Buyer follow-up on the sale of the Rio Linda Property.

Business Operations: Applicant spent 4.2 hours in this category. Applicant's services included participating in telephone conferences and email exchanges with the Trustee and the Trustee's accountant, Gene Gonzales, regarding the Debtor's 2017 tax returns and issues regarding same; exchanging email correspondence to Debtor's counsel regarding the Debtor's failure to respond to the Trustee's accountant's inquiry regarding the Debtor's tax returns; exchanging email correspondence with the Trustee's accountant regarding the difficulties he encountered and efforts he expended attempting to communicate with the Debtors' accountant; exchanging email correspondence with the Trustee regarding the Debtors' request for purported St. Mena business records that was contrary to the Debtor's testimony at the first meeting of creditors; drafting a letter to the Debtor's attorney regarding the Debtor's requests for purported records from the Trustee that Debtor Aiad Samuel previously testified did not exist; and reviewing email correspondence from Gene Gonzales to the Debtor's counsel regarding his request for documents from the Debtor.

Cash Collateral/Financing: Applicant spent 13.0 hours in this category. Applicant's services included reviewing cash collateral budgets; drafting filing and serving the Trustee's seventh and eighth supplemental motions to use cash collateral; preparing for and attending the hearings on the seventh and eighth supplemental motions for use of cash collateral; and negotiating with secured lenders on forms of cash collateral orders.

Claims Administration & Analysis: Applicant spent 9.4 hours in this category. Applicant's services included participating in telephone conferences and email exchanges with counsel for the USA regarding its claim calculations; participating in telephone conferences with and email exchanges with counsel for the Debtor and counsel for Brakemasters regarding its claim treatment under the plan; exchanging email correspondence with the Trustee and the Debtor's residential lenders regarding their claims; performing legal research regarding the merits of the USA claim; negotiating and drafting a stipulation with USA regarding the allowance of its claim; participating in telephone conference and email exchanges with Sacramento County regarding the County's claim regarding Rio Linda; and reviewing and analyzing the motion to approve loan modification agreement with the Debtors.

FFWP Fee Applications: Applicant spent 6.2 hours in this category. Applicant's services included drafting, filing and serving FFWP's third interim fee application; and drafting and submitting order approving FFWP's third interim fee application.

General Case Administration: Applicant spent 31.4 hours in this category. Applicant's services included:

reviewing and addressing numerous filings received from the Court regarding the Debtors' requests for transcripts and redaction deadlines;

participating in a telephone conferences with the Trustee regarding the Debtor's motion to dismiss and the Court's notices regarding same;

reviewing and analyzing the Court's memorandum of decision on the Debtor's motions to recuse the bankruptcy judge;

reviewing the orders regarding the motion to recuse the bankruptcy judge, continuing the hearing on confirmation and setting a hearing on the Debtor's motions to remove the Trustee; reviewing and analyzing the Debtors' multiple motions to remove the Trustee;

drafting, filing and serving the Trustee's opposition to the motions to remove the Trustee and related pleadings; reviewing R. Jare's statement regarding withdrawal of counsel;

reviewing the Court's tentative rulings on the matters set for hearing on August 28, 2018;

researching and drafting a timeline regarding the various motions filed by the Debtors' to dismiss case or remove trustee;

preparing for and attending the hearings on the motions to remove the Trustee and Plan confirmation;

exchanging email correspondence with the Trustee regarding multiple case issues including the status of the Debtor's motions to remove the Trustee; and

participating in telephone conferences with the Trustee regarding multiple case issues including, but not limited to, the plan, claims of the USA, Brakemasters and the residential property lenders, and interim fee applications.

Other Professional Fee Applications: Applicant spent 9.3 hours in this category. Applicant's services included drafting, filing and serving the final fee application of Sackett Corporation; began drafting the second interim fee motion of the Trustee; preparing for and attending the hearings on professional fee applications; reviewing the Court's minutes of the hearings on fee applications; and drafting and uploading orders approving the interim fee applications.

Plan/Disclosure Statement: Applicant spent 133.5 hours in this category. Applicant's services included:

performing extensive work negotiating and drafting the Trustee's plan and disclosure statement; exchanging email correspondence with the US Trustee's office regarding requested revisions to the Trustee's plan and disclosure statement;

drafting, filing and serving a notice of hearing on approval of disclosure statement;

preparing for and attending the hearing on approval of the disclosure statement;

drafting, filing and serving the first amended plan and disclosure statement;

drafting and submitting order approving disclosure statement;

drafting a notice of hearing on confirmation of the plan and the ballot forms;

preparing and serving plan solicitation packages on all creditors entitled to vote;

working on plan confirmation and claim treatment issues including negotiating stipulations with various JP Morgan Classes, US Bank, Brakemasters and the USA, reviewing the ballots received and drafting a declaration regarding ballot tally in support of confirmation; drafting, filing and serving the Trustee's confirmation brief and the declaration of Scott Sackett in support of confirmation;

reviewing the Court’s final ruling on the continued confirmation hearing due to the various motions filed by the Debtors; drafting, filing and serving a reply brief to A. Samuel’s objection to confirmation;

researching and analyzing plan confirmation issues including matters related to the Debtors objections to confirmation and secured creditor deficiencies;

preparing for and attending the plan confirmation hearing;

drafting revisions to first amended plan to address matters resolved at the confirmation hearing; negotiating and drafting the plan confirmation order;

drafting, filing and serving notice of entry of order confirming the plan;

working with the Trustee on issues related to determining the effective date of the plan; and

drafting filing and serving the notice of effective date of the plan.

Reporting (Including Monthly, Quarterly and other Accounting Reports) Applicant spent 2.1 hours in this category. Applicant’s services included reviewing, filing and serving the Trustee’s monthly operating reports.

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	Hourly Rate	Time	Total Fees Computed Based on Time and Hourly Rate
Donald W. Fitzgerald	3	\$495.00	\$1,485.00
Jason E. Rios	162.2	\$405.00	\$65,691.00
Jennifer E. Niemann	30	\$395.00	\$11,850.00
Karen L. Widder	20.2	\$195.00	\$3,939.00
Total Fees for Period of Application			\$82,965.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees & Costs	Interim Fees & Costs Paid
First Interim	\$55,902.54	\$55,902.54
Second Interim	\$151,872.54	\$151,872.54

Third Interim	\$132,417.05	\$132,417.05
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$340,192.13	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,684.31 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Document Retrieval (Pacer)	\$16.00
Photocopies	\$1,743.40
Postage	\$646.28
On-Line Legal Research	\$278.63
Total Costs Requested in Application	\$2,684.31

TRUSTEE’S STATEMENT

Applicant filed Trustee’s Declaration Regarding Statement of Review of Motion on November 9, 2018. Dckt. 1307. The Statement indicates Client, the Chapter 11 Trustee and Plan Administrator, reviewed this Motion and has no objections to the fees and expenses sought herein.

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. Fourth and Final Fees in the amount of \$82,965.00 and prior Interim Fees in the amount of \$340,192.13 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a Chapter 11 case under the confirmed Plan.

Costs & Expenses

Applicant, in addition to the normal hourly rate for the professionals and out of pocket expenses for photocopies and mailing, Applicant has also included \$278.63 for “on-line research.” This court expects professionals, as part of their hourly rates, to provide the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases, in office legal libraries, or

driving to a law library); phones, email, and facsimile; secretarial/clerical support; and the use of CourtCall or other telephonic services that allow a professional to greatly expand their competitive market area. In the future, Applicant should not seek, and will not be allowed, online legal research “charges,” except if it is for materials that one would not expect a bankruptcy professional to have in place to provide services for a client. For this case and others being transferred over from Department A, in light of the apparent practices of these charges being allowed and them being of *de minimis* amount the court allows them for this Interim and Final Application.

Fourth and Final Costs in the amount of \$2,684.31 and prior Interim Costs in the amount of \$2,684.31 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Review of Prior Interim Fees

The court has review the prior orders and rulings for the allowance of interim fees and costs.

First Interim Fees Ruling (Civil Minutes, Dckt. 348) and Order (Dckt. 350); DCN: FWP-11

The court approved \$55,308 in First Interim Fees and \$594.54 in Costs. The court authorized payment of 100% of the fees and costs. In the Ruling the court addresses the opposition asserted by Debtor to the fees and costs.

Second Interim Fees Ruling (Civil Minutes, Dckt. 796) and Order (Dckt. 798); DCN: FWP-22

The court approved \$148,235.00 in Second Interim Attorney’s Fees and \$3,637.54 in Costs. The court authorized payment of 80% of the fees and 100% of the costs, with 20% of the fees held in reserve pending final approval.

Third Interim Fees Ruling (Civil Minutes, Dckt. 1098) and Order (Dckt. 1105); DCN: FWP

The court approved \$1,129,625.00 in Third Interim Attorney’s Fees and \$2,792.05 in Costs. The court authorized payment of 80% of the fees and 100% of the costs, with 20% of the fees held in reserve pending final approval, unless a lower amount of reserved was agreed to by “the USA.”

The court authorizes the Plan Administrator under the confirmed plan to pay the fees and costs allowed by the court.

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

Fees	\$82,965.00
Costs and Expenses	\$2,684.31

pursuant to this Application and prior interim fees and costs of \$340,192.13 as final fees pursuant to 11 U.S.C. § 330.

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 Felderstein Fitzgerald Willoughby & Pascuzzi LLP (“Applicant”), Attorney for Scott Sackett, the Chapter 11 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 Felderstein Fitzgerald Willoughby & Pascuzzi LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, Professional employed by the Chapter 11 Trustee

Fees in the amount of \$82,965.00
Expenses in the amount of \$2,684.31,

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

The fees and costs pursuant to this Motion, and fees and costs in the amount of \$340,192.13 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

6. [16-21585-E-11](#) AIAD/HODA SAMUEL
[FWP-39](#) Pro Se

MOTION FOR COMPENSATION FOR
SCOTT M. SACKETT, CHAPTER 11
TRUSTEE(S)
11-9-18 [[1309](#)]

TO BE HELD IN COURTROOM NO.
28, 7TH FLOOR

Tentative Ruling: The Motion For Compensation by the Chapter 11 Trustee has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on November 9, 2018. **By the court's calculation, 31 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).**

With respect to the notice period and the notice actually given, **XXXXXXXXXXXXXXXXXXXX**

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.

Scott Sackett, the Chapter 11 Trustee, (“Applicant”) for the Estate of Aiad Samuel and Hoda Samuel (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 1, 2017, through October 16, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

A review of the application shows that Applicant’s services for the Estate include budgeting, operation, management, and maintenance of the shopping centers and residential properties that are part of the Estate. The Estate has \$1,545,674.56 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 REQUESTED

Applicant provides records indicating Applicant spent at least a total of 819.9 hours performing services on behalf of the estate at a standard billing rate of \$325.00 per hour, an agent’s standard billing rate of \$100.00 per hour, and an administrator’s standard billing rate of \$60.00 per hour for total Trustee hourly fees in the amount of not less than \$238,299.00. However, Applicant here seeks compensation based on disbursements from the Estate to all parties in interest from Applicant’s appointment May 10, 2016, through October 31, 2018, which total \$10,673,097.

While no task billing is provided, an extensive review of the services provided to the Estate is included within the Motion. See Dckt. 1311 at 6:21-15:28. The services provided primarily relate to the budgeting, operation, management, and maintenance of the shopping centers and residential properties that are part of the Estate. Other services include those necessary to create monthly operating reports, receive approval for use of cash collateral, administer the case generally, maintain/upkeep/repair and subsequently market/sell property of the Estate, pursue insurance claims, oppose numerous appeals by Debtors of the sale

of property of the Estate, correct errors on Debtors' tax returns, contacted creditors with unscheduled claims, and drafted the Confirmed First Amended Plan of Liquidation.

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$47,500.00
3% of the balance of \$9,673,079.00	\$290,192.37
Calculated Total Compensation	\$343,442.37
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$343,442.37
Less Previously Paid	\$230,987.82
<u>Additional Final Fees Requested</u>	\$112,454.55

Applicant requests the following costs:

Expense	Cost
Advances for locks and keys	\$222.14
Parking and Mileage	\$109.00
Postage	\$301.64
Miscellaneous	\$446.70
Total	\$1,079.48

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$112,454.55 and prior Interim Fees in the amount of \$230,987.82 are approved pursuant to 11 U.S.C. § 330, and are authorized to be paid by the Plan Administrator from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

In this case, the Chapter 11 Trustee currently has \$1,545,674.56 of unencumbered monies to be administered. Applicant's efforts have resulted in over \$9,100,000.00 recovered for the estate. Dckt. 1311.

As provided by Congress in 11 U.S.C. § 326(a) provides the maximum compensation structure for trustees in Chapter 11 cases based on "all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. The reasonable compensation for a trustee, the court shall treat it as a "commission," which must be "reasonable

compensation for actual, necessary services rendered by the Trustee.” 11 U.S.C. § 330(a)(6) and (a)(1)(A).

Thus, the fees of a trustee are not merely a lodestar, hours worked (x) reasonable billing rate analysis, but a percentage commission structure. However, such percentage does not default to the maximum not to exceed amount, but must be a “reasonable” commission.

Here, the files of the court reflect a long, winding, hard fought Chapter 11 case for the Trustee. In the thirty-two (32) months this case has existed, there are now 1,323 docket entries. This case was filed by Debtor on March 15, 2016. On April 22, 2016, one month after the case was filed, Fairview Holdings II, LLC filed a Motion to Convert the Case to Chapter 7. Dckt. 47. The court’s ruling details the conduct of Debtor which constituted cause to appoint a Chapter 11 trustee, which included Debtor not listing assets on the Schedules, and the Debtor in Possession using cash collateral without authorization. Civil Minutes, Dckt. 61. The court, rather than converting the case determined that the appointment of a Chapter 11 trustee was proper. As noted by the court, rather than converting the case to an immediate Chapter 7 liquidation, the more mediate step of the appointment of a trustee and affording all parties in interest, including Debtor, the opportunity to pursue a Chapter 11 plan. The Trustee was appointed on May 10, 2016. Order, Dckt. 75.

Debtor then filed a Motion to Dismiss the Chapter 11 Trustee and reinstated the Debtor in Possession on May 31, 2016. Dckt. 107. Debtor filed an Amended Motion to Dismiss the Chapter 11 Trustee and Reinstated the Debtor in Possession on June 14, 2016. Dckt. 129. Debtor filed a Second Amended Motion to Dismiss the Chapter 11 Trustee and Reinstated the Debtor in Possession on August 2, 2016. Dckt. 204.

On May 16, 2016, Debtor filed a Motion to Voluntarily Dismiss the Chapter 11 Case. Dckt. 82. Debtor filed an Amended Motion to Voluntarily Dismiss the Chapter 11 case on May 25, 2016. Dckt. 96.

On June 14, 2016, the court entered an order denying without prejudice the Debtor’s *ex parte* motions to Dismiss the Chapter 11 Trustee and Motion to Dismiss the Chapter 11 case. Dckt. 121.

As the Trustee began administering property of the bankruptcy estate and obtaining the required orders, such as for the use of cash collateral, the battles with creditors began. Fairview Holdings II, LLC opposed the use of cash collateral generated from its real property collateral. Dckt. 198. Ultimately, with agreements reached with creditors, the Trustee obtained authorization to use cash collateral. August 1, 2018 Civil Minutes, Dckt. 203.

Then on August 2, 2016, Debtor filed a Second Amended Motion to Dismiss the Chapter 11 Trustee and Reinstated the Debtor in Possession. Dckt. 204. Though filed *ex parte* and not noticed for hearing as required (which the court noted in the prior order denying the multiple *ex parte* motions requesting dismissal of the case and dismissal of the Chapter 11 Trustee), the court issued an order setting the Second Amended Motion for hearing, notwithstanding the Debtor’s shortcomings. Order, Dckt. 206.

In addition to the Trustee, opposition to the Second Amended Motion was filed by Fairview Holdings II, LLC (Dckt. 229). The Civil Minutes for the September 6, 2016 hearing on the Second Amended Motion state that it was “Dropped subject to being reset by debtor subject to the conditions stated orally on the record.” Dckt. 260.

The Trustee's Monthly Operating Report for July 2016 (Dckt. 237) reflects that there had been \$46,128 in rents generated in July 2016 for the estate, and the cumulative total (in what appears from when the Trustee was appointed) of \$95,907.

By the Monthly Operating Report for December 2017, the Trustee reports having received \$514,395 in rent monies and having generated \$6,900,000 in gross receipts from real property sales, and \$632,985 in insurance proceeds. This is indicative of a substantial, financially more complex Chapter 11 estate, as compared to one of the more usual individual consumer Chapter 11 to save a house or deal with nondischargeable debts which exceed the Chapter 13 jurisdictional limits of 11 U.S.C. § 109.

The Trustee proceeded with reviewing and addressing the claims of creditors. In this process, in addition to dealing with the opposing creditor, the Trustee also was addressing opposition to such claim settlements by the Debtor. Given that this appears to be a surplus case, the standing for Debtor to weigh in on the claim settlements exists, but adds to the complexity of the administration of this case.

On November 8, 2016, then counsel for Debtor filed a Status Conference Report that included a request that the court order mediation between the Trustee and Debtor. Dckt. 387. The Motion states that Debtor "has had in place a 10 million dollar bailout hard money loan in place to buy the estate back." *Id.* ¶ 2. Further, that such \$10 Million bail out had been "in place for quite a time."

The unauthenticated exhibits showing the \$10 Million bailout includes a term sheet stating that the loan was to be for \$10,000,000, the term was 12 months, the interest rate was 11%, the loan fees was \$403,000.00, and the monthly payment was \$91,666.67 (interest only). Dckt. 388 at 5.

In looking at assets of the bankruptcy estate, on Amended Schedule A/B lists ten real properties with a total value of approximately \$6,100,000. Dckt. 65 at 2-3. Debtor states that for their business-related assets they have no accounts receivables. *Id.* at 9.

On September 28, 2016, Debtor filed another Amended Schedule A/B, which listed 27 real properties with a stated total value of \$26,268,500, including properties in Texas, the Mojave Desert, Santa Cruz, Siskiyou, Sacramento, "Hawn O," and West Sacramento. Dckt. 336. The complexity of the real estate properties is shown by these amendments.

On January 9, 2017, Debtor Hoda Samuel filed a motion to dismiss her from this bankruptcy case. Dckt. 450. This appears to be an *ex parte* motion and not set for hearing. In the Motion, Debtor Hoda Samuel asserted that Debtor Aiad Samuel signed her name to the bankruptcy petition (but that she did not personally sign the bankruptcy petition. On January 9, 2017, Debtor Aiad Samuel (through his counsel) filed a Motion to "Strike Voluntary Petition and Dismiss Case. Dckt. 457. The U.S. Trustee opposed such dismissals, citing to Aiad Samuel having a power of attorney for Hoda Samuel and that the power of attorney was used to commence this bankruptcy case.

The court denied Aiad Samuel's Motion to Strike the Bankruptcy Petition and Dismiss the Case. Order, Dckt. 666. The court's ruling addresses in detail the issues and grounds for denying the requested relief. Civil Minutes, Dckt. 657; Order, Dckt. 697. The court denied Debtor Hoda Samuel's Motion to dismiss her from the bankruptcy case. Civil Minutes, Dckt. 692. The four page, single spaced, ruling addresses the issues and grounds in detail.

Motions, oppositions, and various other pleadings and proceedings ensued in this case.

On June 28, 2018, the court approved the Trustee's Disclosure Statement for a Chapter 11 Plan in this case. Order, Dckt. 1116. The information in the Disclosure Statement about the bankruptcy estate and property being administered, includes the following:

When the Debtors filed their bankruptcy petition on March 15, 2016 ("Petition Date"), the Debtors' primary assets were multiple real estate properties and projects including leased commercial shopping center locations and undeveloped land (the "Properties") owned directly by the Debtors or through their wholly owned limited liability company, St. Mena.

Disclosure Statement, p. 7:20-23.

The Debtors also have failed to provide numerous documents or other materials requested by the Trustee and/or the U.S. Trustee, including but not limited to: (a) keys for locks at the shopping centers, (b) copies of tenant leases, (c) a tenant ledger or schedule of rents for the shopping centers, (d) copies of bills or invoices for all services related to the shopping centers, (e) a list of accounts payable, or (f) the operating agreement or other business records for St. Mena and St. Marcorious, LLC.

Id., p. 8:23-28.

Since his appointment, the Trustee has operated under multiple cash collateral orders permitting use by the Estate of rents from tenants who leased premises at real estate properties owned by the Estate. These cash collateral orders permitted the Trustee to pay necessary operating expenses regarding the Properties and to fund the overhead of the Chapter 11 Estate. In addition, the USA agreed to provide a carve-out from its collateral of an aggregate amount from all sales of real property of \$400,000 to the Trustee to be held by the Trustee as a carve out for Trustee's fees, the Trustee's professionals' fees, and the US Trustee fees under 28 U.S.C. § 1930(a) in the cumulative amount of up to \$350,000, and a carve out for unsecured creditors of at least \$50,000 (collectively, the "USA Carve Out"). The Plan provides for payment of the USA's Allowed Claim in full from the Rio Linda USA Proceeds and the curing of the defaults on the deeds of trust for the JP Morgan Prairie Circle Collateral and the US Bank Collateral. Therefore, the remaining Estate Funds, including the USA Carve Out, shall be treated as unencumbered funds on the Effective Date.

Id., p. 9:8-20.

On April 6, 2017, the Court entered its Order Granting Chapter 11 Trustee's Motion to Approve Substantive Consolidation of the Debtors' Estate with St. Mena and St. Marcorious LLC. As a result of the Substantive Consolidation Order, the assets and liabilities of St. Mena are treated as part of the Debtors' Estate.

Id., p. 9:23-26.

After evaluating the alternative of reorganization of the Debtors' business and debts, the Trustee determined that it was in the best interests of the Debtors'

creditors and the Estate that the Properties be marketed and sold. Thereafter, the Trustee actively marketed and sold certain Properties of the Estate with the assistance of real estate brokers at Cushman and Wakefield of California, Inc., namely four shopping centers located in Sacramento, West Sacramento and Rio Linda, California, which were sold pursuant to Bankruptcy Court orders approving such sales, as follows: West Sacramento Center \$4,450,000, Power Inn Center \$1,100,000, Stockton Blvd Center \$1,350,000, and Rio Linda Center \$2,200,000.

In addition to the sale of the four shopping centers, the Trustee has sold or caused to be sold certain personal property of the Debtors' Estate including all automotive equipment and tools that was located in the auto repair shop at the Stockton Blvd Center, as well as the personal property of any material value located at the Rio Linda Center that was sold at a public auction conducted by Tranzon Asset Strategies, an auctioneer retained by the Trustee.

Id., p. 9:28, 10:1-12.

As a result of or in connection with the Trustee's sale of the West Sacramento Center, all claims of secured creditor Fairview Holdings II, LLC against the Estate in excess of \$3,000,000 have been satisfied. As a result of or in connection with the Trustee's sale of the Power Inn Center, all claims of secured creditor JP Morgan as to the Power Inn Center in excess of \$700,000 have been satisfied. As a result of or in connection with the Trustee's sale of the West Sacramento Center, the Power Inn Center, the Stockton Blvd Center and the Rio Linda Center, the USA has been paid, or is holding, \$2,958,541.21 for payment pending final allowance of its Claim following confirmation of the Plan. The Trustee estimates that the remaining balance of the Allowed Secured Claim of the USA, if any, will not exceed \$6,500.

Id., p. 10:16-24.

Post-petition, sometime between 5:00 p.m. on Saturday, May 27, 2017, and 1:30 a.m. on Tuesday, May 30, 2017, the fire suppression sprinkler system in a vacant grocery store premises (the "Grocery") located at the Rio Linda Center began releasing a significant flow of water from a fire sprinkler head or a pipe into the Grocery, filling the basement of the Grocery entirely and releasing significant amounts of water on the entire first floor of the Grocery (the "Incident"). This Incident caused significant damage to the basement, the Grocery, and some damage to the personal property contained in the Grocery. The damaged personal property was discarded as refuse.

The Trustee promptly reported the loss resulting from the Incident to the insurer of the Rio Linda Center, Farmers Insurance Exchange ("Farmers"). The Trustee obtained Bankruptcy Court approval to use insurance proceeds paid by Farmers to repair and restore damage to the Grocery related to the Incident to the point that the Trustee determined as optimal for him to sell the Rio Linda Center, i.e., addressing asbestos and water damage but not restoring the Grocery premises to full pre-Incident condition so that the Grocery premises can be used for other purposes, and accepting insurance proceeds in cash from the insurer for the Rio Linda Center in lieu of the insurer restoring the Grocery to full pre-Incident condition. To date, the

Trustee has received \$632,985 in insurance proceeds related to the Incident. The Trustee completed the remediation of the Rio Linda Center and completed the sale of that center with a significant portion of the insurance proceeds reserved as a Plan Asset.

Id., p. 11:10-28.

Debtor Hoda Samuel has appealed numerous orders of the Bankruptcy Court to the Ninth Circuit Bankruptcy Appellate Panel (“BAP”), generating nine separate appeals in the BAP asserting, among other things, that the Court’s approval for the sale of shopping centers should be reversed and that the Debtors’ bankruptcy case should be dismissed. As of the date of this Disclosure Statement, eight of the BAP appeals have been dismissed. The final and only remaining BAP appeal relates to a cash collateral order entered by the Court in January 2017 and is scheduled for submission without oral argument on June 21, 2018.

Id., p. 12:16-22.

The above further indicates the complexity of this bankruptcy case and the duties of the Chapter 11 Trustee.

After the Disclosure Statement was approved, on July 17, 2018, Debtor Aiad Samuel, filed a motion to have the bankruptcy judge to whom the case was assigned dismissed, the Trustee dismissed, and a hearing on “Numerous Conflicts of Interest” in this case. Dckt. 1121. Debtor Hoda Samuel filed a companion Motion for Recusal of the Bankruptcy Judge and Trustee. Dckt. 1122. As done by Debtor Hoda Samuel, the “removal” of a federal judge is made through a request of recusal, not by request to another bankruptcy judge.

On August 7, 2018, the Motion of Debtor Hoda Samuel was denied. Dckt. 1145. The grounds for denying the Motion are stated in the Memorandum Opinion and Decision issued thereto. Dckt. 1148. The court’s twenty-seven page Memorandum Opinion and Decisions addresses in detail the request and the grounds for denial. On August 23, 2018, the court denied Debtor Aiad Samuel’s Motion to have the bankruptcy judge dismissed. Order, Dckt. 1175. The grounds for the court’s denial of Debtor Aiad Samuel’s Motion in the Memorandum Opinion and Decision filed on August 23, 2018. Dckt. 1174. The requests to remove the Chapter 11 Trustee filed by Debtor Hoda Samuel and Debtor Aiad Samuel were denied by Order entered on September 27, 2018. Dckt. 1242. The grounds for denial of those motions are stated in the Memorandum issued by the court. Dckt. 1240.

On September 27, 2018, the court entered its order confirming the Chapter 11 Plan of Liquidation proposed by the Trustee. Order, Dckt. 1246. The Bankruptcy Appellate Panel has construed a document filed by Debtor Aiad Samuel as a notice of appeal of the confirmation order, and that the Bankruptcy Appellate Panel has opened BAP Appeal No. EC-18-1318 thereon.

The Motion for Compensation recounts the above and other complexities in this case. It states grounds including the operation of commercial properties, marketing and sale of residential and non-residential properties, and the substantive consolidation of this case with two other entities owned by the two Debtors. The Motion states these, and specific actions taken by the Trustee, with particularity (Fed. R. Bankr. P. 9013).

The Trustee has provided his Declaration, Dckt. 1311, providing personal knowledge testimony of the various allegations concerning the administration of this bankruptcy case.

No Opposition has been filed to the Motion.

Upon review of this case and the activities of the Trustee, the court concurs that allowance of the commission at the maximum rates provided in 11 U.S.C. § 326 is proper and appropriate. This court has not been shy in awarding commissions at lesser rates – when warranted. Here, the maximum compensation is warranted.

EXPENSES ALLOWED

The costs requested by Applicant include \$446.70 for “Miscellaneous.” A review of the raw billing statement filed as Exhibit A indicates this “Miscellaneous” charge is primarily charges for lunch meetings. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows \$446.70 of the requested costs.

Second and Final Costs in the amount of \$632.78 and prior Interim Costs in the amount of \$1,144.69 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

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

Fees	\$112,454.55
Costs and Expenses	\$632.78

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 Scott Sackett, the Chapter 11 Trustee and Plan Administrator, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Scott Sackett is allowed the following fees and expenses as a professional of the Estate:

Scott Sackett, the Chapter 11 Trustee

Fees in the amount of \$112,454.55
Expenses in the amount of \$632.78,

IT IS FURTHER ORDERED that costs of \$446.70 are not allowed by the court.

The fees and costs pursuant to this Motion, and fees in the amount of \$230,987.82 and costs of \$632.78 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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