

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 6, 2022 at 10:30 a.m.

1. <u>18-20964-E-7</u> <u>PGM-2</u>	BRADLEY GILBREATH Peter Macaluso	CONTINUED MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE ADMINISTRATION, AS TO DEBTOR 9-10-21 <u>[121]</u>
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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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2021. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration 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 Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration filed by Movant is XXXXXXXXXX.

Peter G. Macaluso (“Movant”), the former attorney for deceased debtor, Bradley Jay Gilbreath (“Debtor”), filed this motion for omnibus relief. Movant seeks permission to proceed as though the death of Debtor has not occurred. Movant seeks to waive the 11 U.S.C. § 1328 instructional course requirement concerning personal financial management. ^{FN.1.}

FN. 1. The Motion is drawn stating that counsel is representing the Debtor, Bradley Gilbreath. But it also states that Bradley Gilbreath is deceased. Counsel has no client, though he may owe duties and obligation to Mr. Gilbreath’s estate, which would ultimately enforced by Mr. Gilbreath’s successor executor, administrator, or representative. Counsel does not purport to represent any successor for Debtor and none has been presented to, or appointed by, this court.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides, “Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.”

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384. Under Federal Rule of Bankruptcy Procedure 9014, Motions are considered contested matters that apply to Federal Rule of Bankruptcy Procedure 7025.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death

may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*.

Counsel for the late Debtor requested that the hearing be continued so that he could seek out assistance from applicable county agencies or impress upon an heir of the Debtor the need to be appointed as a representative so that this case may be completed through discharge for Debtor.

December 21, 2021 Status Report

Debtor's Counsel provided the court with a status report on December 21, 2021. Dckt. 135. Counsel notes they have not been able to contact either the Son nor Mother of the deceased debtor. Counsel and Trustee's Counsel has met to discuss the recently filed adversary proceeding and requests the court to allow ninety (90) days for the recently filed Adversary Proceeding to be prosecuted.

January 6, 2022 Hearing

Counsel for Debtor reports that he cannot locate Debtor's brother or mother. No reference is made to Debtor's widow who, as stated in the Trustee's Complaint, is continuing in possession of property of the bankruptcy estate and denying the Trustee access thereto. As of this point in time, Counsel for Debtor does not have a client, there being no successor representative being appointed.

Counsel notes that the Chapter 7 Trustee has commenced an Adversary Proceeding. That Adversary Proceeding seeks to recover property from the widow spouse of Debtor. Adv. 21-2084. The Chapter 7 Trustee (the case being converted on August 11, 2021) asserts in the case that certain real property was owned by Debtor as his sole and separate property (not community property or as joint tenants). The Plaintiff Chapter 7 Trustee is seeking to obtain possession of this property of the bankruptcy estate from the widow spouse, who has continued in possession thereof and has denied the Trustee and her professionals access to.

It is unclear why counsel, who has no client, requests that the court allow this bankruptcy case to proceed without a successor representative, and counsel of the successor representative's choice.

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 to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration, as to Debtor, filed by Peter G. Macaluso, the deceased debtor's attorney, ("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 to Waive Financial Management Course Requirement, Waive Section 1328 Certificate Requirement, Continue Case Administration filed by Movant is **xxxxxxxxxx**.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 15, 2021. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion to Retain Jurisdiction Over Unadministered Asset is denied without prejudice.

The Chapter 7 Trustee has filed a Motion for the court to order that notwithstanding the closing of this bankruptcy case, that the estate's interest in an inheritance in assets in the Philippines remain property of the bankruptcy estate. These interests have been sold to Regina Burnley ("Purchaser"), with the bankruptcy estate retaining an interest in the proceeds from the sale of these assets. Civ. Minutes and Order, Dckts. 327, 328. As discussed in the Civil Minutes, there was somewhat of a long history of the Chapter 7 Trustee administering these assets and negotiating an arms-length sales price.

As set forth in the Purchase Agreement, as modified by the Parties, which modifications are stated in the Order Approving the Sale (Dckt. 328), the Bankruptcy Estate has a security interest in the net recoveries on the inheritance interest. Additionally, the Purchase Agreement requires the Purchaser to consult with the Trustee concerning any agreements with the other persons claiming any competing interests with respect to the inheritance interest. Order, ¶ 5(b); Dckt. 328.

Purchaser is represented by counsel who is also representing Adela Bon Gaunia and Benjamin Zamora Villanueva ("Creditors"). Creditors and their counsel have had some "challenging" matters in this Bankruptcy Case and related Adversary Proceedings. The conduct of the various counsel in connection with those matter has caused the court concern relating to how their view practice in

Federal Court and their obligations as attorneys admitted to practice in Federal Court.

Though the Purchase Agreement with Purchaser requires the Trustee to protect the interests of the Bankruptcy Estate, be aware of these rights and interests of the Estate, and fulfill duties of a trustee, the Trustee supports the closing of the case, the corresponding discharge of the Chapter 7 Trustee, and the assets being retained in a bankruptcy estate for which there is no bankruptcy trustee. Additionally, while the Philippines litigation proceeds with Debtors family members who threatened to torpedo the Bankruptcy Estate's interests unless the court gave them to the Debtors (See Civil Minutes, Dckt. 327) and Purchase who is represented by counsel for Creditors, there will be no one representing the interests of the Bankruptcy Estate and making sure that the Debtor's Family Members, Purchaser, and Purchaser's Counsel "play fair" and respect the Bankruptcy Estate's interests, and not be seduced into "doing what they think is right for Purchaser and the 'rightful heirs'" without regard to the legal and financial rights and interests of the Bankruptcy Estate.

Congress provides in 11 U.S.C. § 350 that after a case has been fully administered and the court has discharged the trustee, "the court shall close the case." While it is true that the court may suspend the automatic abandonment of property of the Bankruptcy Estate as provided in 11 U.S.C. § 554(c), that is not a basis for leaving assets in the bankruptcy estate to be unadministered (especially given the prior demonstrated conduct of some of the parties upon whom the Bankruptcy Estate's recovery is dependent).

The court has reviewed the legal authority cited by Trustee for the requested relief, *In re Hart*, 76 B.R. 774 (Bankr. C.D. Cal. 1987). The court notes that there is a mixed (and limited) citation history for *In re Hart*. In reviewing the decision in *Hart*, the court first notes that the bankruptcy estate's interest in that case is stated to be an undivided 30% interest in a deed of trust (and presumably in the obligation that the deed of trust secures). Thus, nobody would purchase the real property encumbered by the deed of trust unless the persons having an interest therein authorize the reconveyance of the deed of trust – including the representative of the bankruptcy estate.

The obligation secured by the deed of trust was owed by an obligor in a District Court receivership. Presumably, the *Hart* bankruptcy estate had filed its claim in the receivership and the District Court receivership judge could not order the monies relating to that interest to be made around the bankruptcy estate representative.

Additionally, that the sale of the property in *Hart* in the receivership would occur, if ever at all, in the distant future.

Finally, the *Hart* bankruptcy judge concluded that upon the receiver wanting to proceed with a sale, the receiver would give notice to the "trustee." However, the bankruptcy court did not address how such notice could be given to a representative of the bankruptcy estate that did not exist – the bankruptcy case having been dismissed and the trustee discharged. Also, the bankruptcy judge concluded that no oversight by the U.S. Trustee was necessary because the receivership was in District Court. It is not explained how the District Court or District Court appointed receiver would take the place of the U.S. Trustee.

Here, in this Bankruptcy Court Case, there are active things, though limited, for a fiduciary trustee of the estate to do. Key is to insure that no deal is being cut by the Debtors' Family Members (who have been represented to threaten the Bankruptcy Estate with actively working to deprive the

Bankruptcy Estate of its rights and interests if the Bankruptcy Estate did not do the Family Members bidding) and the Purchaser that is to Purchaser's (and possibly others') benefit to the detriment of the Bankruptcy Estate.

In the Motion the substantial burden on the Bankruptcy Estate in keeping the case open and the fiduciary Chapter 7 Trustee protecting the interests of the Bankruptcy Estate are:

The bankruptcy case has been open for over two years, and it is unlikely that the estate's interest in the inheritance can be recovered in the near future. The COVID-19 pandemic has significantly impacted the Philippines judiciary. Legal proceedings in the Philippine Courts have slowed down to a near halt. Meanwhile, the funds on hand are being eroded by bank and technology charges for the fiduciary account that the Trustee is using to hold the funds

Motion, p. 6:16-20; Dckt. 418. No particularities as to the "funds being eroded" are stated in the Motion, just the Trustee's conclusion that such erosion exists.

The Chapter 7 Trustee has filed his Declaration (Dckt. 420) providing his "personal knowledge of the matter." Fed. R. Evid. 602. However, the Trustee states that he does not have such personal knowledge, but merely that "I believe," "I have been advised," and "I am aware" of the substance of what he is presented to the court to provide testimony under penalty of perjury. It is clear from the Declaration that the Trustee does not have personal knowledge of the matters he certifies (Fed. R. Bank. P. 9011) he purports to state under penalty of perjury.

Additionally, the Trustee's "testimony" is merely a cut and paste of the Motion prepared by Trustee's counsel. One could wonder whether the Trustee read the Declaration in which he purports to state his testimony under penalty of perjury, or merely signed whatever counsel put in front of him because if signed, the then Trustee "would win."

It is clear that the administration of these interests have challenged the Trustee and his counsel in this case. See Civil Minutes, Dckt. 327, discussing the Trustee's first attempted administration of the inheritance assets for a 75% contingency that he wanted to pay the purchaser. It may well be that this case has overwhelmed the Trustee and counsel, leaving them at a loss as to how to fulfill the Trustee's fiduciary duties to the Bankruptcy Estate.

The court denies the present Motion without prejudice. This case is not one in which there is a highly contingent; far, far in the future possible asset. Rather, there is a present value interest being actively litigated in the Philippine probate proceedings. The Trustee has retained the necessary oversight right to protect the Bankruptcy Estate's interests. The Purchaser is required to provide real time information as to the process of the probate proceedings and any settlement negotiations between the "characters" to the probate and terms (so the Trustee can protect the Bankruptcy Estate's interests) of any proposed settlement.

There is active administration required for the Trustee.

If having estate funds "parked" in a bank account is causing erosion of the estate assets, there could be several options. The Trustee could seek an interim distribution so there will not be such "parked assets." Possibly, the Trustee could seek to have the monies deposited with the Clerk of the

Court to be held pending further order of the court. Possibly the U.S. Trustee has recommendations it makes for trustees in this type of situation.

If and when the Trustee would seek such relief, the court is confident the Trustee will: (1) have the motion state with particularity the grounds upon which the relief is request, and (2) that the declaration in support will contain personal knowledge testimony and provide the financial information and not merely a conclusion which the court is directed to adopt.

The Motion is denied without prejudice.

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

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

The Motion for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Geoffrey Richards, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Retain Jurisdiction Over Unadministered Asset is denied without prejudice.

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 29, 2021. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is XXXXXXX .
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Desmond, Nolan, Livaich & Cunningham ("DNLC") the Attorney ("Applicant") for Geoffrey Richards, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 15, 2019 to November 22, 2021.

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 conducting discovery relating to estate property and filing various motions to assist in the administration of the estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.20 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Litigation and Contested Matters: Applicant spent 11.70 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Asset Related Matters: Applicant spent 96.40 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Fee Employment Applications: Applicant spent 11.00 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Relief from Stay Proceedings: Applicant spent 0.30 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Creditor Communications: Applicant spent 6.20 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Claim Administration: Applicant spent 2.90 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Settlement: Applicant spent 0.10 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

Pleadings Applicant spent 9.80 hours in this category. Applicant did not give a summary of major services for this category, but did provide a detailed exhibit describing each hour billed.

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	Average Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham, Partner (\$425/hour) Benjamin C. Tagert, Associate (\$225/hour) Nicholas L. Kohlmeyer, Associate (\$275/hour) Mikayala E. Kutsuris, Law Clerk (\$150/hour)	139.60	\$275.48	<u>\$38,457.01</u>
Total Fees for Period of Application			\$38,457.01

DNLC provided nine pages worth of exhibits that illustrate the breakdown of each of the above professionals and their services. Exhibit A, Dckt. 429. However, there is no clear summary of how many hours each professional worked on these matters.

The court notes, the table given for the “Task Billing Breakdown for Hourly Services” lists the total hours billed as 139.60 and a blended hourly rate of \$275.48. Upon a quick calculation of the court, the total fees for this hourly rate would equal \$38,457.01, not \$38,457.50 requested.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,803.73 pursuant to this application.

The costs requested in this Application are listed in Exhibit B, Dckt. 429. The main costs are for courtcall, copying, and postage fees.

~~FEES AND COSTS & EXPENSES ALLOWED~~

Fees

Hourly 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 \$38,457.01 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the~~

available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case:

Costs & Expenses

First and Final Costs in the amount of \$1,803.73 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case:

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court:

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

Fees	\$38,457.01
Costs and Expenses	\$1,803.73

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

Desmond, Nolan, Livaich & Cunningham (“DNLC”) the Attorney (“Applicant”) for Geoffrey Richards, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 15, 2019 to November 22, 2021.

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

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

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

IT IS ORDERED that by Desmond, Nolan, Livaich & Cunningham (“DNLC”) is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham (“DNLC”);
Professional employed by the Chapter 7 Trustee

Fees in the amount of \$38,457.01
Expenses in the amount of \$1,803.73;

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

~~**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.~~

FINAL RULINGS

4. [21-22901-E-7](#) [MOH-1](#) **MARTHA WHITLOW**
Michael Hays **MOTION FOR TEMPORARY WAIVER**
OF THE CREDIT COUNSELING
REQUIREMENT AND/OR MOTION FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE
11-26-21 [21]

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on November 23, 2021. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion for Exemption from the Credit Counseling and Financial Management Course 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 Exemption from the Credit Counseling and Financial Management Course is granted.

Debtor Martha Whitlow ("Debtor") seeks to waive the 11 U.S.C. § 1328 instructional course requirement concerning personal financial management. Debtor states they are seventy-seven (77) years old and for the last four years has been suffering from dementia and Alzheimer's disease. Motion, Dckt. 21. Debtor states their limited mental capacity would cause them to be unable to complete credit counseling and debtor education requirements on their own. The Declaration of Ashley Allen, Debtor's daughter, was filed to provide evidentiary support of Movant's health. Dckt. 25.

The Chapter 7 Trustee filed a nonopposition to the Motion on November 30, 2021.

Financial Management Course Requirement

Pursuant to 11 U.S.C. § 1328(g)(1), the court shall not grant a discharge unless the debtor has completed an instructional course concerning personal financial management. One exception to this requirement is for individuals described in 11 U.S.C. § 109(h)(4). This excuses individuals who the court finds unable to comply with the requirement because of incapacity, disability, or active military duty in a combat zone. 11 U.S.C. § 109(h)(4); 8 Collier on Bankruptcy P 1328.08 (16th 2021). For incapacity, the debtor must be impaired by reason of mental illness or mental deficiency so that they are incapable of realizing and making rational decisions with respect to their financial responsibilities.

Here, Debtor has provided evidentiary support that their limited mental capacity due to dementia and Alzheimer's disease may cause them to be unable to comply with the financial management requirement. There being no opposition from the Trustee, the court grants Debtor's Motion to wave this requirement.

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 Exemption from the Credit Counseling and Financial Management Course filed by Martha Whitlow ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Exemption from the Credit Counseling and Financial Management Course is granted, and Movant is excused from completing the Financial Management Course requirement under 11 U.S.C. § 1328.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 11, 2021. By the court’s calculation, 56 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Gabrielson & Company, the Accountant (“Applicant”) for Kimberly J. Husted, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2020, through November 3, 2021. The order of the court approving employment of Applicant was entered on December 1, 2020. Dckt. 26. Applicant requests fees in the amount of \$3,978.50 and costs in the amount of \$99.49.

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include significant accounting and tax matters. 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.

Review Business Operation Accounting and Financial Documents: Applicant spent 2.7 hours in this category. Applicant assisted trustee in reviewing various financial and accounting documents involving debtor's interest landscaping business.

Prepare Federal and California Estate Income Tax Returns: Applicant spent 5.6 hours in this category. Applicant prepared first and final short year ended October 30, 2021 federal and California estate income tax returns.

Administration Functions: Applicant spent 1.6 hours in this category. Applicant prepared accountant declaration and related employment documents expanding duties of accountant.

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
Michael Gabrielson - Principal (2020)	3.1	\$395.00	\$1,224.50
Michael Gabrielson - Principal (2021)	6.8	\$405.00	<u>\$2,754.00</u>
Total Fees for Period of Application			\$3,978.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$99.49 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Copying Charges	\$39.30
Postage	\$60.19
Total Costs Requested in Application	\$99.49

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,978.50 are approved pursuant to are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$99.49 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$3,978.50
Costs and Expenses	\$99.49

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

Gabrielson & Company, the Accountant (“Applicant”) for Trustee, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2020, through November 3, 2021. The order of the court approving employment of Applicant was entered on December 1, 2020. Dckt. 26. Applicant requests fees in the amount of \$3,978.50 and costs in the amount of \$99.49.

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 Gabrielson & Company, the Accountant (“Applicant”), Accountant for Kimberly J. Husted, Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter
7 Trustee

Fees in the amount of \$3,978.50
Expenses in the amount of \$99.49,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Gonzales & Associates, Inc., the Accountant ("Applicant") for Scott M. Sackett, the Chapter 11 Trustee and Plan Administrator ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case.

Per the Trustee's Plan, the Plan Administrator pays compensation and expenses reimbursement upon Post-Confirmation notice and no party sending the Plan Administrator a written objection to such proposed course of action. Plan at 26, Dckt. 1234. Per the Motion, "Since all creditors have been paid in full and the Plan Administrator requests that remaining surplus of the estate after payment of all Plan Administrator and professional fees be turned over to the Debtors, the Plan Administrator sought the Debtors' stipulation to allowance of such fees utilizing the streamlined process provided by the Plan to minimize the fees for preparation of final fee applications and to maximize the surplus available to the Debtors. However, the Debtors' withdrew their support for the streamlined approach. Thus, given the notice language, and the Debtors' refusal to stipulate to a streamlined approach, the Plan Administrator files this Motion seeking final allowance of the fees and expenses requested by this Motion out of an abundance of caution." Motion at 3, Dckt. 1616.

Fees are requested for the period October 29, 2018, through and including October 31, 2021. The order of the court approving employment of Applicant was entered on August 1, 2016. Dckt. 200. The Court previously entered and approved final compensation to Gonzales for pre-confirmation work for the Trustee. The current request is for fees and expenses incurred during post-confirmation while the Applicant was performing work for the Plan Administrator. Applicant requests fees in the amount of \$14,336.00 and costs in the amount of \$38.50. Additionally, Applicant requests a contingent reserve of \$3,000 for fees and costs related to accounting services that may be incurred between the filing of this Motion and closing the case.

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 include accounting services to the Plan Administrator including various tax assignments. 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.

Accounting Services: Applicant spent 52.9 hours in this category. Applicant reviewed prior year’s corporate tax returns, prepared federal and state tax returns, prepared estimated tax projections, and assisted with obtaining tax refunds.

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 A. Gonzales (2018) Partner	7.1	\$350.00	\$2,485.00

Gene A. Gonzales (2019)	11.5	\$355.00	\$4,082.50
Gene A. Gonzales (2020)	1.6	\$375.00	\$600.00
Gene A. Gonzales (2021)	0.1	\$375.00	\$37.50
Lori A. Cima (2018) CPA Manager	13.8	\$215.00	\$2,967.00
Lori A. Cima (2019)	13.2	\$220.00	\$2,904.00
Lori A. Cima (2020)	4.2	\$225.00	\$945.00
Lori A. Cima (2021)	1.4	\$225.00	<u>\$315.00</u>
Total Fees for Period of Application			\$14,336.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$38.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Postage	\$38.50
Total Costs Requested in Application	\$38.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$14,336.00 plus up to \$3,000.00 for fees and costs that may be incurred from November 1, 2021 through the closing of this case out of available funds of the estate are approved pursuant to 11 U.S.C. § 330 in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Final Costs in the amount of \$38.50 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 funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

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	\$14,336.00
Additional Fees to Closing	\$ 3,000.00 - amount not to exceed
Costs and Expenses	\$38.50

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.

Gonzales & Associates, Inc., the Accountant (“Applicant”) for Scott M. Sackett, the Chapter 11 Trustee and Plan Administrator (“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..... \$14,336.00

Additional Fees for services
after December 2, 2021
in an amount not to exceed.....\$3,000.00

Costs and Expenses in
the amount of.....\$ 38.50

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

IT IS FURTHER ORDERED that Plan Administrator under the confirmed plan is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Scott M. Sackett, the Plan Administrator ("Applicant") for Aiad and Hoda Samuel, Debtors ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 1, 2021, through November 30, 2021. The order of the court approving Applicant as Chapter 11 Trustee was entered on May 10, 2016. Dckt. 75. The total Plan Administrator's fees during the post-confirmation period of October 15, 2018, through and including November 30, 2021 equal \$158,556.00. The total expenses equal \$3,019.65. Thus, there is a total of \$161,575.65 in fees and costs incurred by the Plan Administrator over the 3-year post-confirmation period.

The Plan Administrator states they have not been paid for fees and costs incurred during the period of March 1, 2021 through and including November 30, 2021 which totals in the aggregate \$23,808 and \$1,349.84, respectively. Additionally, the Plan Administrator is requesting the contingent reserve of \$3,500.00 for December 1, 2021 through closing of the case.

Pursuant to Applicant's Motion, "[t]he Plan Administrator sought the Debtors' stipulation to allowance of such fees utilizing the streamlined process provided by the Plan to minimize the fees for preparation of final fee applications and to maximize the surplus available to the Debtors. However, the Debtors withdrew their support for the streamlined approach. Thus, given the notice language, and the Debtors' withdrawal of their agreement to a streamlined approach, the Plan Administrator files this Motion seeking final allowance of the fees and expenses requested by this Motion out of an abundance of caution." Dckt. 1626 at 4.

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 include extensive services relating to Debtor’s post-confirmation Plan. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

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

General Case Administration: Applicant spent 532.70 hours in this category. Applicant performed services on behalf of the estate and detailed billing statements are attached as Exhibit A. Dckt. 1630.

Applicant has not provided a breakdown of how many hours he, his agent, and his administrator have worked on this case. Additionally, he has not provided a summary in his motion of the amount of hours requested for the period from March 1, 2021 to November 30, 2021. However, pages 49-55 of Applicant’s Exhibit provide a detailed breakdown of the hours billed for the period. Exhibit A, Dckt. 1630.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,349.84 pursuant to this application

The costs requested in this Application are detailed on page 56 of Exhibit A,

Description of Cost	Cost
Costs advanced via credit card to pay Pacific Specialty Insurance for 209 Prairie Circle property insurance premium	\$793.00
Costs advanced via credit card to city of Sacramento for junk pick up	\$34.84
Costs advanced to 1800GOT JUNK for removal of Junk at 148 Estes	\$522.00
Total Costs Requested in Application	\$1,349.84

Dckt. 1630.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$23,808.00 and the contingent reserve of \$3,500.00 for December 2, 2021 through closing of the case are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution under the Plan.

Costs & Expenses

Final Costs in the amount of \$1,349.84 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution under the Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay 100% of the fees and 100% of the 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	\$23,808.00 plus up to \$3,500 for fees and costs that may be incurred from December 1, 2021 through the closing of this case
Costs and Expenses	\$1,349.84

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case. Scott M. Sackett, the Plan Administrator (“Applicant”) for Aiad and Hoda Samuel, Debtors (“Client”), makes a Final Request for the Allowance of Fees and Expenses 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 Scott M. Sackett, the Plan Administrator (“Applicant”), for Aiad and Hoda Samuel, the Debtors, (“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 Scott M. Sackett is allowed the following fees and expenses as a professional of the Estate:

Scott M. Sackett, Plan Administrator employed by the Chapter 11 Debtors

Fees in the amount of.....\$23,808.00

Additional Fees for services
after December 2, 2021
in an amount not to exceed.....\$ 3,000.00

Costs in the amount of.....\$ 1,349.84

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

IT IS FURTHER ORDERED that the Plan Administrator under the confirmed plan is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution under the Plan.

IT IS FURTHER ORDERED that notwithstanding the above, for any Additional Fees for services provided from December 2, 2021 and thereafter, that Applicant shall file and serve on the Debtor and the U.S. Trustee a Supplemental Pleading and this Order provide a simple billing statement showing the additional services, time expended, billing rate, and computation of the total fees and costs requested (a.k.a. a simple time and services billing statement). If no objection to the additional fees is filed within ten days and a noticed hearing set by the objecting party, the Plan Administrator my pay the additional fees and costs without further order of the court or hearing.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, and Office of the United States Trustee on December 2, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the Attorney ("Applicant") for Plan Administrator, Scott M. Sackett ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 1, 2021, through and including November 30, 2021. The order of the court approving employment of Applicant was entered on May 19, 2016. Dckt. 95. Total fees in the three year post-confirmation period include \$88,947.50 in fees and \$1,191.63 in costs and expenses. Of these amounts, \$20,307.00 in fees and \$322.96 in costs and expenses have not yet been paid. Additionally, Applicant requests up to \$10,000 for fees and costs that may be incurred from December 1, 2021 through the closing of this case out of available funds of the estate.

Pursuant to Applicant's Motion, "[t]he Plan Administrator sought the Debtors' stipulation to allowance of such fees utilizing the streamlined process provided by the Plan to minimize the fees for preparation of final fee applications and to maximize the surplus available to the Debtors. However, the

Debtors withdrew their support for the streamlined approach. Thus, given the notice language, and the Debtors' withdrawal of their agreement to a streamlined approach, the Plan Administrator files this Motion seeking final allowance of the fees and expenses requested by this Motion out of an abundance of caution." Dckt. 1633.

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 assisting the Plan Administrator with numerous significant case developments. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant did not provide a task billing analysis for the fees and costs they have yet to be paid. However, pages 97-125 of Applicant's Exhibit A provides a detailed report of their hourly billing for the period of March 2021 through November 2021. In total during the post-confirmation employment, Applicant has spent 226.3 hours on various aspects of the case.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are detailed in Exhibit A. Applicant did not provide a summarized breakdown in their Motion.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$322.96 pursuant to this application. The court is unclear what these costs and expenses are for as they are not summarized in the Motion nor are they easily able to find in the Exhibit. However, the amount of costs seem reasonable over the nine (9) month period Applicant is requesting for.

FEES AND COSTS & EXPENSES ALLOWED

Hourly Fees and Costs

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$20,307.00 and \$322.96 in costs and expenses that have not yet been paid are approved pursuant to 11 U.S.C. § 330. Additionally, up to \$10,000 for fees and costs that may be incurred from December 1, 2021 through the closing of this case out of available funds of the estate are approved pursuant to 11 U.S.C. § 330. These will be paid from the available funds of the Estate in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Plan Administrator under the confirmed plan to pay 100% of the fees and 100% of the 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	\$20,307.00 and up to \$10,000 for fees and costs that may be incurred from December 1, 2021 through the closing of this case
Costs and Expenses	\$322.96

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

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, the Attorney (“Applicant”) for Plan Administrator, Scott M. Sackett (“Client”), makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 1, 2021, through and including November 30, 2021. The order of the court approving employment of Applicant was entered on May 19, 2016. Dckt. 95. Total fees in the three year post-confirmation period include \$88,947.50 in fees and \$1,191.63 in costs and expenses. Of these amounts, \$20,307.00 in fees and \$322.96 in costs and expenses have not yet been paid. Additionally, Applicant requests up to \$10,000 for fees and costs that may be incurred from December 1, 2021 through the closing of this case out of available funds of the estate.

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 & Rios LLP (“Applicant”), Attorney for Plan Administrator, Scott M. Sackett, (“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 & Rios LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP,
Professional employed by Plan Administrator, Scott M. Sackett

Fees in the amount of \$20,307.00 and up to \$10,000 for fees
and costs that may be incurred from December 1, 2021 through
the closing of this case

Expenses in the amount of \$322.96,

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

IT IS FURTHER ORDERED that the Plan Administrator under the
confirmed plan is authorized to pay 100% of the fees and 100% of the costs
allowed by this Order from the available funds of the Estate in a manner
consistent with the order of distribution under the confirmed Plan.

IT IS FURTHER ORDERED that notwithstanding the above, for any
Additional Fees for services provided from December 2, 2021 and thereafter, that
Applicant shall file and serve on the Debtor and the U.S. Trustee a Supplemental
Pleading and this Order provide a simple billing statement showing the additional
services, time expended, billing rate, and computation of the total fees and costs
requested (a.k.a. a simple time and services billing statement). If no objection to
the additional fees is filed within ten days and a noticed hearing set by the
objecting party, the Plan Administrator may pay the additional fees and costs
without further order of the court or hearing.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, and Office of the United States Trustee on December 1, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case 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 Final Decree and Order Closing Case is granted.

The Motion for Final Decree and Order Closing Case has been filed by Scott M. Sackett, the Plan Administrator. Dckt. 1606. The Plan Administrator makes this request pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. §§ 105 and 350 and Rule 3022 of the Federal Rules of Bankruptcy Procedure.

Debtors filed their voluntary petition for relief under Chapter 11 on March 15, 2016. On May 10, 2016, the Bankruptcy Court entered its order approving the Trustee's appointment as the Chapter 11 Trustee for the Debtors' Bankruptcy Case pursuant to the request of the United States Trustee filed on May 6, 2016. All Allowed Claims have been paid in full pursuant to the Plan. All claim objections, contested matters, and adversary proceedings, if any, have been resolved. Upon the Final Report and Account becoming final and the final distributions being approved and disbursed, the Plan Administrator is not aware of any other administration to be completed for the Estate

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is “fully administered and the court has discharged the trustee.” The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” factors the court considers include whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor’s successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Applicant argues the following factors support approval of the Motion:

- 1. The order confirming the Plan was entered over three years ago and is final.
- 2. All documents needed to implement the Plan will have been signed and all payments will have been made or approved to be made as provided in the Plan prior to the hearing.
- 3. Plan Administrator has transferred property as contemplated by the Plan.
- 4. Plan Administrator does not anticipate the need for further Court jurisdiction over or intervention.
- 5. No pending matters in the case after payment of final fees and turnover of the remaining surplus to the Debtors.

6. The administration of the estate will be completed upon (i) approval of the contemporaneously filed Final Report and Account, (ii) payment of final fees, and (iii) approval of the Motion to Approve Final Allowance of Fees and Costs and Distribution of Estate Funds and Turnover of Estate Property to the Debtors.
7. The Plan Administrator does not anticipate the need for further Court jurisdiction over or intervention in this case.

There being no objection, Debtor is entitled to the closing of the case.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 11 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 Final Decree and Order Closing Case filed by Scott M. Sackett, the Plan Administrator, 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 granted, the Chapter 11 case is closed, and the Clerk of the Court is authorized to close this case.

Final Ruling: No appearance at the January 6, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, creditors, and Office of the United States Trustee on December 1, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Approve Final Distributions Under Chapter 11 Trustee's First Amended Plan of Liquidation and Turnover of Remaining Surplus to the Debtors 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 Final Distributions Under Chapter 11 Trustee's First Amended Plan of Liquidation and Turnover of Remaining Surplus to the Debtors is granted.

Scott M. Sackett, the Plan Administrator ("Plan Administrator"), files this Motion to Approve Final Distributions Under Chapter 11 Trustee's First Amended Plan of Liquidation and Turnover of Remaining Surplus to the Debtors. Dckt. 1611. The Motion seeks authority to distribute and/or turnover all remaining estate funds and property to the Debtors upon (1) approval of the Plan Administrator's Final Report and Account and (2) payment of all final fees and costs for the Plan Administrator and his professionals. After payment of the final fees and costs, there is no further administration of the estate.

Pursuant to Section 6.6 of Trustee's First Amended Plan of Liquidation, upon the Court

having approved the Plan Administrator's and the Professional Persons' final fee applications, the Plan Administrator's final accounting, and the payment of all allowed fees and all Allowed Claims, a final distribution of the remaining Plan Assets, including any Estate Funds, shall be made to the Debtors. Dckt. 1234 at 26.

Pursuant to 11 U.S.C. § 1142, the court may direct the debtor and any other necessary party to perform any act that is necessary for the consummation of the plan. Here, distributing and/or turning over all remaining estate funds and property to the Debtors upon the conclusion of this case is necessary to consummate Section 6.6 of the Plan. As such, the Plan Administrator is authorized to turnover to the Debtors the Remaining Surplus after payment of all final fee applications and all final United States Trustee Fees.

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 Final Distributions Under Chapter 11 Trustee's First Amended Plan of Liquidation and Turnover of Remaining Surplus to the Debtors filed by Scott M. Sackett, the Plan Administrator ("Plan Administrator") 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 granted, and the Plan Administrator is authorized to turnover to Debtors the Remaining Surplus after payment of all final fee applications and all final United States Trustee Fees.