

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**March 2, 2023 at 10:30 a.m.**

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**FINAL RULINGS**

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| 1. <a href="#"><u>17-21973-E-7</u></a><br><a href="#"><u>JES-2</u></a> | <b>JOSE/MARIA PIMENTEL</b><br><b>Michael Williams</b> | <b>MOTION FOR COMPENSATION FOR</b><br><b>JAMES SALVEN, ACCOUNTANT(S)</b><br><b>1-20-23 <a href="#"><u>[214]</u></a></b> |
|--|---|---|

**Final Ruling: No appearance at the March 2, 2023 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2023. By the court’s calculation, 41 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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James Salven, the Accountant (“Applicant”) for Irma Edmonds, 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 August 2, 2017, through March 9, 2023. The order of the court approving employment of Applicant was entered on August 2, 2017. Dckt. 68. Applicant requests fees in the amount of \$10,445.00 and costs in the amount of \$472.63.

## **TRUSTEE’S STATEMENT**

Trustee filed a statement on January 20, 2023 stating the request for fees and expenses are reasonable and necessary. Dckt. 218.

## **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 preparing monthly operating reports and assisting with tax issues. 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.

Employment and Fee Applications: Applicant spent 1.5 hours in this category. Applicant assisted in preparing this application.

Monthly Operating Reports: Applicant spent 55.0 hours in this category. Applicant prepared monthly operating reports and each month collected and analyzed data until all operations ceased.

Tax Advice and Preparation: Applicant spent 6.6 hours in this category. Applicant assisted with Debtor’s taxes.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
James E. Salven, Accountant	22.1	\$250.00	\$5,525.00
“SSM”, Unknown	41.0	\$120.00	<u>\$4,920.00</u>
<b>Total Fees for Period of Application</b>			\$10,445.00

The court notes, an “SSM” has provided services in addition to Mr. Salven. The Motion and Supporting Pleadings do not identify who “SSM” is and their experience. However, from the detailed time records, the court can discern that SSM is one of “Support Personnel” included in Applicant’s business. Dec. ¶ 5; Dckt. 66. The nature of the work being done and the billing rate are consistent with support staff (more than clerical but not a C.P.A.).

Though in future applications all of the persons providing the services need to be clearly identifies and their qualifications to do the work stated, for this Application further pleadings are not required.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$472.63 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Copies	\$0.15	\$43.20
Envelopes	\$0.20	\$1.00
Fee Application - File and Serve	\$1.29	\$60.63
Tax Processor	\$162.00	\$324.00
Monthly Operating Reports	\$0.15	\$43.80
<b>Total Costs Requested in Application</b>		\$472.63

## **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 \$10,445.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$472.63 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	\$10,445.00
Costs and Expenses	\$472.63

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

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

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

The Motion for Allowance of Fees and Expenses filed by James Salven (“Applicant”), the Accountant for Irma Edmonds, 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 James Salven is allowed the following fees and expenses as a professional of the Estate:

James Salven, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$10,445.00.

Expenses in the amount of \$472.63,

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

2. [17-25481-E-7](#)  
[KJH-4](#)

**JOHN ROSE**  
**Paul Pascuzzi**

**MOTION FOR COMPENSATION FOR  
KIMBERLY J. HUSTED, CHAPTER 7  
TRUSTEE(S)  
1-23-23 [\[139\]](#)**

**Final Ruling:** No appearance at the March 2, 2023 hearing is required.

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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 January 23, 2023. 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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Kimberly J. Husted, the Chapter 7 Trustee, (“Applicant”) for the Estate of John W Rose (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 18, 2017, through January 3, 2023.

## STATUTORY BASIS FOR FEES

### 11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may receive, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

### Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According 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 complex litigation assistance in the Chapter 7 case, as well as other administrative duties. The Estate has \$5,120.16 of unencumbered monies to be administered as of the filing of the application. Trustee is requesting a reduced commission, based on compensable receipts of only \$43,405.20, compared to the \$125,000.00 recovered. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES REQUESTED**

**Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$2,023.80
<b>Calculated Total Compensation</b>	<b>\$7,773.80</b>
<b>Requested Reduced Commission</b>	<b>\$5,090.52</b>
<b><u>Total First and Final Fees Requested</u></b>	<b>\$5,090.52</b>

## **FEES ALLOWED**

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,090.52 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$5,120.16 of unencumbered monies to be administered. Applicant’s efforts have resulted in a realized gross of \$125,000.00 recovered for the estate. Dckt. 142.

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



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

Fees	\$5,090.52
Costs and Expenses	\$29.64

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted , the Chapter 7 Trustee

Fees in the amount of \$5,090.52  
Expenses in the amount of \$29.64,

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