

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

May 4, 2023 at 10:30 a.m.

FINAL RULINGS

1. 22-90128-E-12 RLC-6	JEA2, LLC Stephen Reynolds	MOTION FOR COMPENSATION FOR STEPHEN M. REYNOLDS, DEBTORS ATTORNEY(S) 4-3-23 [107]
DEBTOR DISMISSED: 4/6/23		

Final Ruling: No appearance at the May 4, 2023 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 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 3, 2023. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The court shortens the time for notice to the thirty-one days given in light of this case being dismissed and the proceedings therein.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.
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Stephen M. Reynolds, the Attorney (“Applicant”) for JEA2, LLC, the Debtor in Possession (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 20, 2022 through March 24, 2022. Applicant requests fees in the amount of \$8,362.50 and costs in the amount of \$139.94. The court authorized employment of Applicant on May 13, 2022. Dckt. 22.

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 communicating with Debtor and Creditors, filing motions, communicating with Trustee, reviewing claims, reviewing Monthly Operating Reports, and drafting a Plan of Reorganization. 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 15.8 hours in this category. Applicant communicated with Debtor and the Chapter 12 Trustee.

Plan Statement: Applicant spent 0.5 hours in this category.

Fee Application: Applicant spent 6.0 hours in this category.

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
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Stephen M. Reynolds, Attorney	22.3	\$375.00	<u>\$8,362.50</u>
Total Fees for Period of Application			\$8,362.50

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	<u>\$14,100.00</u>	\$14,100.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$14,100.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$139.94 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$24.50

The costs requested in this Application are,

Description of Cost	Cost
Mailing	\$70.99
CourtCall Costs	\$68.95
Total Costs Requested in Application	\$139.94

For the second time, Applicant is attempting to inappropriately collect CourtCall costs. The court's civil minutes for Applicant's prior Interim Application details why the court does not find reimbursement of CourtCall costs appropriate. Civil Minutes, Dckt. 67. It is unclear why Applicant has attempted, for a second time, to request these expenses.

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. Second and Final Fees in the amount of \$8,362.50 and prior Interim Fees in the amount of \$14,100.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be

paid by the Chapter 12 Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 12 case.

Costs & Expenses

Second and Final Costs in the amount of \$70.99 and prior Interim Costs in the amount of \$24.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 12 Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 12 case.

The court authorizes the Chapter 12 Debtor in Possession to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 12 Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$8,362.50
Costs and Expenses	\$70.99

pursuant to this Application and prior interim fees of \$14,100.00 and interim costs of \$29.50 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Stephen M. Reynolds (“Applicant”), Attorney for JEA2, LLC, the Debtor in Possession, (“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 Stephen M. Reynolds is allowed the following fees and expenses as a professional of the Estate:

Stephen M. Reynolds, Professional employed by the Debtor in Possession

Fees in the amount of \$8,362.50
Expenses in the amount of \$70.99,

pursuant to the present Application and final approval for the interim fees of \$14,100.00 and costs of \$29.50

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 12 Debtor in Possession.

IT IS FURTHER ORDERED that, after application of all retainer monies held by Applicant, the Chapter 12 Debtor is authorized to pay 100% of the fees and 100% of the costs allowed by this Order, this case having been dismissed without confirmation of a Chapter 12 Plan.