

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 9, 2024 at 10:30 a.m.

FINAL RULINGS

1. <u>23-21407</u> -E-7 1 thru 2	BELLA VIEW CAPITAL, LLC Peter Macaluso	CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-29-24 [<u>223</u>]
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Final Ruling: No appearance at the May 9, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, all creditors and parties in interest, and the United States Trustee as stated on the Certificate of Service on February 29, 2024. The court computes that 70 days' notice has been provided.

The court issued an Order to Show Cause based on Susan B. Luce's (on behalf of Creditor Persevere Lending Inc.) failure to pay the required fees in this case: \$13 due on February 7, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

2. [23-21407](#)-E-7

BELLA VIEW CAPITAL, LLC
Peter Macaluso

CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
2-29-24 [224]

Final Ruling: No appearance at the May 9, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, all creditors and parties in interest, and the United States Trustee as stated on the Certificate of Service on February 29, 2024. The court computes that 70 days' notice has been provided.

The court issued an Order to Show Cause based on Susan B. Luce's (on behalf of Creditor Persevere Lending Inc.) failure to pay the required fees in this case: \$13 due on February 7, 2024.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

3 thru 4

Final Ruling: No appearance at the May 9, 2024 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, parties requesting special notice, and Office of the United States Trustee on April 1, 2024. 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.

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

J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) for the bankruptcy estate of Ronald Gene Custodio and Angela Alvarado Custodio, makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of the accountant for the estate, Bachecki, Crom & Co., LLP (“BCC”).

Fees are requested for the period September 19, 2022, through March 11, 2024. The order of the court approving employment of Applicant was entered on September 28, 2022, which was effective beginning September 19, 2022. Dckt. 107. Applicant requests fees in the amount of \$8,749.50 and costs in the amount of \$172.25.

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 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)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a billing analysis and supporting evidence for the services provided, which are described as follows:

BCC evaluated financial information produced regarding Chitas, LLC. BCC assessed documents related to the transfer of a portion of the Debtors' LLC ownership interest to a related party shortly before the petition date. BCC prepared a preliminary evaluation of the Debtors' interest in the restaurant operations and identified valuable assets acquired by the LLC and the use of COVID related funds received by the LLC. BCC conferred and corresponded with the Trustee regarding the LLC's potential to apply for and obtain Employee Retention Credit refunds and regarding settlement negotiation issues.

BCC obtained income tax transcripts to investigate potential income tax refunds. BCC determined tax reporting of the bankruptcy estate's settlement regarding Estate's interest in Chitas Taqueria, LLC. BCC prepared the first and final estate Federal and California income tax returns for the fiscal year ended February 29, 2024. BCC conferred with the Trustee regarding taxes owing arising from the sale and settlement.

Decl., Docket 140 p. 2:8-19.

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	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Jay D. Crom	.3	\$650.00	\$195.00
Jay D. Crom	.2	\$630.00	\$126.00
Jay D. Crom	8.6	\$575.00	\$4,945.00
Kimberly Lam	.3	\$590.00	\$177.00
Virginia Huan-Lau	1.7	\$475.00	\$807.50

Paula Law	4	\$475.00	\$1,900.00
Paula Law	.4	\$460.00	\$184.00
Paula Law	1	\$415.00	\$415.00
Total Fees for Period of Application			\$8,749.50

The court finds the services were beneficial to the Estate and were reasonable.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$172.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Pacer	-----	\$13.30
Copy Charges	\$0.20	\$28.40
Postage	-----	\$50.55
FTB ITR Request	-----	\$80.00
Total Costs Requested in Application		\$172.25

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that BCC effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$8,749.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee, Applicant, from the available funds of the Estate in a Chapter 7 case.

The court further notes that these services related to an agreement by which the Debtor purchased the Estate's interest in the Chita's Taqueria, LLC, which the Debtor had scheduled having a value of \$1,750 (all of which was claimed as exempt), for \$55,000, with Debtor waiving all claims to an exemption in such proceeds of the sale. Motion, Civ. Minutes, and Order; Dckts. 124, 130, 131.

Costs & Expenses

First and Final Costs in the amount of \$172.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee, Applicant, from the available funds of the Estate in a Chapter 7 case.

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

Fees	\$8,749.50
Costs and Expenses	\$172.25

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 J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) for the bankruptcy estate of Ronald Gene Custodio and Angela Alvarado Custodio, on behalf of the accountant for the estate, Bachecki, Crom & Co., LLP (“BCC”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:

Bachecki, Crom & Co., LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$8,749.50
Expenses in the amount of \$172.25,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant for the bankruptcy estate of Ronald Gene Custodio and Angela Alvarado Custodio.

Final Ruling: No appearance at the May 9, 2024 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, parties requesting special notice, and Office of the United States Trustee on April 1, 2024. 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 granted.

J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) for the bankruptcy estate of Ronald Gene Custodio and Angela Alvarado Custodio, makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of Applicant’s attorney in the case, Desmond, Nolan, Leviach & Cunningham (“DNLC”).

Fees are requested for the period September 22, 2022, through March 11, 2024. The order of the court approving employment of Applicant was entered on September 22, 2022. Dckt. 101. Applicant requests fees in the amount of \$5,806.50 and costs in the amount of \$70.88.

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)).

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.

Litigation and Contested Matters: DNLC spent 0.5 hours in this category. DNLC reviewed and analyzed deadlines and reviewed CPA evaluations of business accounts regarding buyout transfer avoidance. Mot., Docket 144 p. 3:7-9.

Asset Analysis and Recovery: DNLC spent 4.9 hours in this category. DNLC analyzed LLC amendments, conferenced with Trustee and CPA regarding LLC valuation, and conferenced with Trustee and Debtor's counsel regarding the buy back agreement. *Id.* at P. 3:10-12.

Asset Disposition: DNLC spent 3.5 hours in this category. DNLC drafted and revised a sale motion, planned and prepared for hearing for the sale motion, and appeared at the hearing for that motion. *Id.* at p. 3:13-15.

Fee/Employment Applications: DNLC spent 3.6 hours in this category. DNLC prepared applications to employ counsel and accountant, and drafted and revised fee applications for the same. *Id.* at p. 3:16-18.

Tax Issues: DNLC spent .9 hours in this category. DNLC conferenced with Trustee regarding tax collection, and conferenced with Trustee and CPA regarding tax returns. *Id.* at p. 3:19-21.

Settlement/Non-Binding ADR: DNLC spent .7 hours in this category. DNLC conferenced with Trustee and Debtors' counsel regarding settlement payment. *Id.* at p. 3:22-23.

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	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham	10.7	\$495.00	\$5,296.50
Arthur L. Zhu	3.4	\$150.00	\$510.00
Total Fees for Period of Application			\$5,806.50

The court finds the services were beneficial to the Estate and were reasonable.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$70.88 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$13.40
Postage	-----	\$57.48
Total Costs Requested in Application		\$70.88

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that DNLC effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,806.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee, Applicant, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 |case.

The court further notes that these services related to an agreement by which the Debtor purchased the Estate's interest in the Chita's Taqueria, LLC, which the Debtor had scheduled having a value of \$1,750 (all of which was claimed as exempt), for \$55,000, with Debtor waiving all claims to an exemption in such proceeds of the sale. Motion, Civ. Minutes, and Order; Dckts. 124, 130, 131.

Costs & Expenses

First and Final Costs in the amount of \$70.88 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee, Applicant, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 |case.

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

Fees	\$5,806.50
Costs and Expenses	\$70.88

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 J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) for the bankruptcy estate of Ronald Gene Custodio and Angela Alvarado Custodio, on behalf of Applicant’s attorney in the case, Desmond, Nolan, Leviach & Cunningham (“DNLC”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Leviach & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Leviach & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$5,806.50

Expenses in the amount of \$70.88,

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