

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 9, 2022 at 10:30 AM

1.	<u>22-21091</u>-E-7 SLH-1	LOGAN BYRNE Seth Hanson	MOTION TO COMPEL ABANDONMENT 5-5-22 [12]
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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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 May 5, 2022. An amendment to the Motion was served on the Chapter 7 Trustee on May 11, 2022. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Logan Michael Byrne (“Debtor”) requests the court to order Kimberly J. Husted (“the Chapter 7 Trustee”) to abandon property commonly known as 608 Setucket Court, Roseville CA 95747 (“Property”). The Property is encumbered by the lien of Freedom Mortgage Corporation, securing a claim of \$694,844.00. The Declaration of Logan Michael Byrne has been filed in support of the Motion and values the Property at \$560,650.00.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

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 Compel Abandonment filed by Logan Michael Byrne (“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 to Compel Abandonment is granted, and the Property identified as 608 Setucket Court, Roseville CA 95747 and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Kimberly J. Husted (“Trustee”) to Logan Michael Byrne by this order, with no further act of the Trustee required.

FINAL RULINGS

2. [21-22211](#)-E-7 **KUSHAL HEERA** **MOTION FOR COMPENSATION BY**
DNL-4 **Timothy Walsh** **THE LAW OFFICE OF DESMOND,**
NOLAN, LIVAICH & CUNNINGHAM
FOR J. RUSSELL CUNNINGHAM,
TRUSTEES ATTORNEY(S)
4-27-22 [37]

Final Ruling: No appearance at the June 9, 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, creditors, and Office of the United States Trustee on April 27, 2022. By the court’s calculation, 43 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.

Desmond, Nolan, Livaich, and Cunningham (“DNLC”), the Attorney (“Applicant”) for J. Michael Hopper the Chapter 7 (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 27, 2021, through April 1, 2022. The order of the court approving employment of Applicant was entered on October 27, 2021. Dckt. 18. Applicant requests fees in the amount of \$5,000.00.

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 involvement in the sale of the bankruptcy estate’s interest in the Altamira Stock to Randhir S. Kang (“Buyer”). The Estate has \$9,988.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES 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.

Asset Marketing and Sales: Applicant spent 20.30 hours in this category. Applicant states general counsel: (a) DNL-2, the Trustee’s Motion to Sale Estate Property; and (b) the corresponding Sale Agreement.

General Case Administration: Applicant spent .10 hours in this category. Applicant exchanged correspondence with general counsel regarding a conflict waiver.

Litigation and Contested Matters: Applicant spent 4 hours in this category. Applicant states they (a) communicated with Buyer’s counsel regarding the sale of Altamira Stock; and (b) communicated with a potential overbidder.

Efforts to Assess and Recover Property of the Estate: Applicant spent 7.30 hours in this category. Applicant states they (a) reviewed documents produced by the Buyer; (b) communicated with the Trustee regarding the documents produced; and (c) reviewed franchise ownership documents.

Asset Disposition: Applicant spent .10 hours in this category. Applicant states general counsel communicated with Trustee.

Fee and Employment Applications: Applicant spent 5.60 hours in this category. Applicant states general counsel prepared DNL-3, the Trustee’s first and final application to approve chapter 7 compensation to Trustee’s counsel. Additionally, general counsel reviewed DNL-1, the general counsel

employment order.

Settlement and Non-Binding ADR: Applicant spent .50 hours in this category. Applicant states general counsel exchanged correspondence with Buyer's counsel regarding the Sale agreement.

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
J. Russell Cunningham (partner)	7.80	\$425.00	\$3,315.00
Kristen D. Renfro (partner)	.10	\$275.00	\$27.50
Benjamin C. Tagert (associate since 2020)	.10	\$225.00	\$22.50
Mikayla E. Kutsuris (associate since 2021)	29.90	\$195.00	<u>\$5,830.50</u>
Total Fees for Period of Application			\$9,195.50

The court notes the Motion states Ms. Kutsuris' fees totaled \$5,623.50. There appears to be an inadvertent mistake in the calculation ($\$195 \times 29.90 \text{ hours} = \$5,830.50$, not \$5,623.50). Although DNLC's fees total \$9,195.50, DNLC's fees, costs, and expenses are capped in the amount of \$5,000.00 with their fees based on 37.90 billable hours at a blended hourly rate of \$131.93 for the period of October 27, 2021 through April 1, 2022.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$63.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$42.75
Photocopies		\$20.50
Total Costs Requested in Application		\$63.25

The total costs and expenses are included in the capped amount of \$5,000.00.

FEES AND COSTS & EXPENSES ALLOWED

Reduced Rate

Applicant seeks to be paid a single sum of \$5,000.00 for its fees, costs, and expenses incurred for Client. First and Final Fees and Costs in the amount of \$5,000.00 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.

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, Costs, and Expenses	\$5,000.00
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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 Name of Desmond, Nolan, Livaich, and Cunningham (“DNLC”), (“Applicant”), Attorney for J. Michael Hopper, 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 Desmond, Nolan, Livaich, and Cunningham (“DNLC”) is allowed the following fees and expenses as a professional of the Estate:

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

Fees, costs, and expenses in the amount of \$5,000.00

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