

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 9, 2020 at 10:30 a.m.

1.	<u>20-20972-E-11</u> <u>RLC-8</u> 1 thru 2	ROBERT/SHERRY MCLEAN Stephen Reynolds	MOTION FOR COMPENSATION FOR STEPHEN M REYNOLDS, DEBTORS ATTORNEY(S) 6-24-20 <u>[77]</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.

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2020. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 for Allowance of Professional Fees is denied without prejudice.
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Stephen M. Reynolds, the Attorney (“Applicant”) for Robert Kelly McLean and Sherry Annette McLean, Debtor in Possession and post-confirmation the Chapter 11 Plan Administrator (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 23, 2020, through June 23, 2020. The order of the court approving employment of Applicant was entered on March 4, 2020. Dckt. 13. Applicant requests fees in the amount of \$27,055.00 and costs in the amount of \$698.42.

Applicant notes that as contemplated by the confirmed Plan of reorganization counsel anticipates payment of his fees from the Debtors’ homestead exemption upon the completion of the sale of their residence. *See* Chapter 11 Subchapter V Plan of Reorganization, Dckt. 36.

INSUFFICIENT NOTICE OF MOTION

Applicant provided 14 days’ notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days’ notice of the hearing. Applicant has provided 7 fewer days than the minimum. Therefore, 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 Stephen M. Reynolds (“Applicant”), Attorney for Robert Kelly McLean and Sherry Annette McLean, 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 the Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF THE COURT DETERMINES THAT APPLICANT PROVIDED SUFFICIENT NOTICE**

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 asset disposition, case administration, claims, creditor meeting, fee application, litigation, and preparing a Plan Statement. 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 Disposition: Applicant spent 22.5 hours in this category. Applicant obtained creditor approval for the sale of two real properties, negotiated with title companies, and negotiated with creditors to reduce their claims to allow the sales to proceed.

General Case Administration: Applicant spent 7.6 hours in this category. Applicant reviewed documents from the US Trustee, communicated with the client and reviewed client's documents, communicated with Swain regarding the automatic stay and the status of his lien in order to sell the property, and communicated with creditors and opposing counsel. Applicant also prepared the instant fee application.

Claims: Applicant spent 9.6 hours in this category. Applicant communicated with opposing counsel, claimants, drafted complaints, created a stipulation, and prepared pleadings supporting the stipulation.

Creditor Meeting: Applicant spent 15.8 hours in this category. Applicant created and filed timely monthly operating reports, responded to document requests from the U.S. Trustee, prepared and reviewed client's documents and statements, attended meeting of creditors, and communicated with client.

Litigation: Applicant spent 1.2 hours in this category. Applicant reviewed the answers to complaints filed against Swain and Ms. Coad-Hermelin regarding the sale of property and avoidance of liens, and communicated and drafted outlining potential resolutions to the litigation.

Plan Statement: Applicant spent 20.6 hours in this category. Applicant prepared Debtor's Plan for Reorganization, and revised several drafts and supporting pleadings, reviewed to objections to confirmation and emailed counsel for objectors regarding amendments, drafted an MPA for the Plan, and researched new sections of the Bankruptcy Code.

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
Stephen M. Reynolds	77.3	\$350.00	\$27,055.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$27,055.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$698.42 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing Fees for 2 motions		\$362.00
Mailing		\$183.82
Certified Copies		\$37.50
Filing Fee for amended schedules		\$31.00
Court Call Fee		\$41.20
Mileage		\$42.90
		\$0.00
Total Costs Requested in Application		\$698.42

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 \$27,055.00 are

approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

First and Final Costs in the amount of \$698.42 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$27,055.00
Costs and Expenses	\$698.42

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 Stephen M. Reynolds (“Applicant”), Attorney for Robert Kelly McLean and Sherry Annette McLean, 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 \$27,055.00;
Expenses in the amount of \$698.42;~~

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

SUBCHAPTER V case

Debtors' Atty: Stephen M. Reynolds

Notes:

Continued from 4/22/20. The Debtor/Debtor in Possession is actively working on a sale of the residential property.

Operating Reports filed: 5/14/20 [Apr]

[RLC-3] Order Confirming Chapter 11 Subchapter V Plan

[RLC-7] *Ex Parte* Application to Approve Stipulation Resolving Secured Claim of Thomas Swain filed 6/16/20 [Dckt 73]; Order granting filed 6/22/20 [Dckt 76]

[RLC-8] Motion for Final Allowance of Fees as Counsel for Debtor-in-Possession and Revested Debtor filed 6/24/20 [Dckt 77], set for hearing 7/9/20 at 10:30 a.m.

The Status Conference is XXXXXXXXXX

JULY 9, 2020 STATUS CONFERENCE

At the Status Conference, counsel for the Plan Administrator Debtors reported 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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on June 21, 2020. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$335.00 due on June 5, 2020.

The hearing on the Order to Show Cause is continued to 10:00 a.m. on July 23, 2020, to be conducted in conjunction with the Motion for Relief From the Automatic Stay filed by CAB West, LLC.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$335.00.

**Review of Current Case, and
Multiple Prior Filings and Dismissals**

In reviewing the court's files, the following recent bankruptcy cases filed by the Debtors and dismissed have been identified:

Chapter 7 Case 20-21964

Filed.....April 6, 2020
Counsel for Debtor.....Dennise Henderson
Dismissed.....April 24, 2020

Basis For Dismissal.....Failure to File Schedules, Statement of Financial Affairs,
and other Documents. Notice of Incomplete Filing and Order; Dckts. 8, 13.

Chapter 7 Case 20-201647

Filed.....March 18, 2020
Counsel for Debtor.....Dennise Henderson
Dismissed.....April 6, 2020

Basis For Dismissal.....Failure to File Schedules, Statement of Financial Affairs, and other Documents. Notice of Incomplete Filing and Order; Dckts. 5, 25.

In the current case, Debtor has filed Schedules, the Statement of Financial Affairs, and the other initial documents required of a debtor seeking relief under the Bankruptcy Code. Dckt. 1.

In reviewing the Statement of Financial Affairs, in response to Question 16, Debtors stated under penalty of perjury that they have not paid anyone any money for any services relating to seeking bankruptcy or preparing a bankruptcy petition. Dckt. 1 at 38.

But this is inconsistent with the Disclosure of Compensation by Debtor's counsel in this case, Dennise Henderson, in which Ms. Henderson states that she has received \$2,000 from the Debtors prior to the commencement of this case for a slew of bankruptcy preparation and filing services. Dckt. 1 at 50. No Disclosure of Compensation was filed in either of the two prior cases this year.

Motion for Relief From Automatic Stay

On June 19, 2020, CAB West, LLC filed a Motion for Relief From the Automatic Stay. Dckt. 14. The Motion seeks relief with respect to a leased vehicle, which the Motion states was surrendered to Movant on May 19, 2020. This motion was filed, notwithstanding Debtors having had pending and dismissed two prior cases within one year of the commencement of this case.

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 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 continued to 10:00 a.m. on July 23, 2020, to be conducted in conjunction with the Motion for Relief From the Automatic Stay filed by CAB West, LLC.

FINAL RULINGS

4. [14-29361](#)-E-7 **WALTER SCHAEFER** **MOTION FOR COMPENSATION FOR**
[DNL-35](#) **Douglas Jacobs** **LUIS CARBALLO, SPECIAL**
4 thru 7 **COUNSEL(S)**
6-3-20 [\[504\]](#)

Final Ruling: No appearance at the July 9, 2020 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 June 3, 2020. By the court’s calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

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

Luis Carballo, the Attorney (“Applicant”) for Kimberly Husted, the Chapter 7 Trustee (“Client”), makes a second and Final Request for the Allowance of Fees and Expenses in this case. Mr. Carballo was engaged as special counsel to assist the Trustee in administering property in Costa Rica, which as the court recalls is recounted in the Motion involved some “interesting” proceedings and conduct of the Debtor and a “creditor” asserting a lien on the property.

Fees are requested for the period April 6, 2015 through May 8, 2020. The order of the court approving employment of Applicant was entered on April 30, 2015. Dckt. 114. Applicant requests fees in the amount of \$13,810.00 and costs in the amount of \$2,180.00. ^{FN.1}

FN.1. The court notes there is an apparent clerical error in the introduction requesting \$2,810.00 in expenses. However, a review of the expenses breakdown reflects expenses in the amount of \$2,180.00. The court has completed the ruling on the assumption the costs requested are in the amount of

\$2,180.00.

Prior to the instant Motion, the court approved interim fees in the amount of \$8,535.00 and interim costs in the amount of \$420.00 pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330, and authorized Client to pay these fees and costs. Dckt. 406.

Furthermore, for other legal services subject to a separate employment agreement, the court authorized Client to pay Applicant a flat fee of \$22,500.00 broken into three payments of \$7,500.00 due at: (1) response to the lawsuit; (2) execution of the proving phase; and (3) sentencing. Dckt. 444. The order authorized this payment “with no further orders pursuant to 11 U.S.C. §§ 330 or 331 required.” *Id.* To date, Client has paid Applicant \$8,955.00 pursuant to the order approving interim compensation (Dckt. 406) and the first \$7,500.00 payment of the \$22,500.00 flat fee pursuant to the court’s order on March, 30, 2018 (Dckt. 444). Motion, Dckt. 504.

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 initiating and prosecuting an Administrative Eviction Process, documenting and removing abandoned belongings from the Estate’s condominium, preparing notarial documents, marketing the condominium in Costa Rica, liquidating the condominium in compliance with Costa Rican law, and facilitating the closing of the sale and transfer of the condominium to the new owner. The Estate has \$400,000.00 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.

Efforts to Assess and Recover Property of the Estate: Applicant spent 24.5 hours in this category. Applicant began the administrative eviction process, secured a demand of eviction in favor of ABC in civil court, and presented documents requested by the Costa Rican judge to effect the eviction,

and inspected and oversaw the removal of property from the condominium. Applicant also worked to market and sell the condominium.

Notarial Services: Applicant prepared the notarial act for the removal of property per the eviction before selling the property.

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
Luis Carballo	24.5	\$150.00	\$3,675.00
Luis Carballo (Notarial Fees)			\$1,600.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$5,275.00

First Interim Fees and Expenses Previously Authorized

The court also authorized the payment of \$8,535.00 in Interim Fees and \$420.00 in costs as part of the First Interim Fee Application, Order, Dckt. 406, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,180.00 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$420.00.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Advances		\$785.00
Corporate Taxes		\$425.00
Travel Reimbursement		\$430.00
Electricity		\$120.00
		\$0.00

Total Costs Requested in Application	\$1,760.00
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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 Interim Fees of \$5,275.00, and the prior Interim Fees of \$8,535.00 are approved as Final Fees of \$13,810.00 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

Second Interim Costs of \$1,760.00 and First Interim Costs of \$420.00 in costs are approved as Final Costs of \$2,180 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 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 Luis Carballo (“Applicant”), Attorney for Kimberly Husted, 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 Luis Carballo is allowed the following fees and expenses as a professional of the Estate for the services specified in the Order authorizing employment (Dckt. 114):

Luis Carballo, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$13,810.00

Expenses in the amount of \$2,180.00,

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

The fees and costs pursuant to this Motion, and fees in the amount of \$8,535.00 and costs of \$420.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

5. 14-29361-E-7 **WALTER SCHAEFER**
DNL-36 **Douglas Jacobs**

Final Ruling: No appearance at the July 9, 2020 Hearing is 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, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 36 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 is granted.

STATUTORY BASIS FOR FEES

(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 providing general case administration, extensive investigation of Estate's interests in potential assets, communication with creditors, claims analysis, overseeing sale of Costa Rica properties, appearing at hearings, reviewing tax returns, and preparing fee applications and the claims distribution. The Estate has \$403,198.73 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 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 opened and entered the case into the management system, reviewed the petition, schedules, conducted the 341 Meeting of Creditors, accounted for the Estate's assets and maintained a proper bond. Trustee employed and consulted with CPA, signed off on tax returns, and prepared fee applications.

Efforts to Assess and Recover Property of the Estate: Applicant investigated the Estate's potential interest in assets including corporations, Costa Rican properties, funds, a Westwood Property, investment assets, a shop and equipment at the shop, and competing claims as to the assets. Trustee further communicated with creditors extensively.

Significant Motions and Other Contested Matters: Applicant formed the entity ABC at the Costa Rican consulate in Los Angeles, oversaw the sale of the Costa Rican properties, and communicated with the Trustee's broker and special counsel in Costa Rica.

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 \$693,616.64	\$34,680.83
Calculated Total Compensation	\$40,430.83
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$40,430.83
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$40,430.83

The fees are computed on the total sales generated \$743,616.64 of net monies for disbursements by the Trustee.

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 \$40,430.83 are approved for Chapter 7 Trustee pursuant to 11 U.S.C. § 330 and 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 \$403,198.73 of unencumbered monies to be administered. The Chapter 7 Trustee's services include: general case administration, extensive investigation Estate's interests in potential assets, communication with creditors, claims analysis, overseeing sale of Costa Rica properties, appearing at hearings, reviewing tax returns, and preparing fee applications and the claims distribution. Applicant's efforts have resulted in a realized gross of \$743,616.64 recovered for the estate. Dckt. 514.

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	\$40,430.83
Costs and Expenses	\$3,424.60

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 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 Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly Husted, the Chapter 7 Trustee

Fees in the amount of \$40,430.83
Expenses in the amount of \$3,424.60.

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.

Final Ruling: No appearance at the July 9, 2020 Hearing is required.

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, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

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

Desmond, Nolan, Livaich & Cunningham (“DNLC”), the Attorneys (“Applicant”) for Kimberly 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 February 6, 2015, through May 29, 2020. The order of the court approving employment of Applicant was entered on February 12, 2015. Dckt. 58. Applicant requests fees in the amount of \$195,829.50 and costs in the amount of \$4,940.96.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorneys’ 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 attorneys 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 attorneys are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorneys must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. Attorneys must exercise good billing judgment with regard to the services provided because the court’s authorization to employ attorneys to work in a bankruptcy case does not give that attorneys “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 providing general case administration, analyzed and recovered assets for the Estate; prepared various employment applications; drafted several essential motions; communicated extensively with trustee and creditors, and prepared fee applications. The Estate has \$403,198.73 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.

General Case Administration: Applicant spent 54.6 hours in this category. Applicant reviewed Debtor's voluntary petition, schedules, and statement of financial affairs; prepared Motions to Employ needed professionals; and prepared Trustee's and instant fee application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 396.5 hours in this category. Applicant assisted Trustee in investigating the Estate's interests in assets including a shop, shop equipment, several properties, properties in Costa Rica, and competing claims to the assets. Applicant further investigated Debtor's investment assets and pre-petition transactions; prepared Motions to Sell and Abandon properties; and communicated with Trustee's broker and special counsel.

Adversary Proceedings and Other Contested Matters: Applicant spent 232.3 hours in this category. Applicant prepared Trustee's complaint for the adversary proceeding regarding Condo 184 in Costa Rica, Trustee's application for default judgment in the adversary proceeding; negotiated compromises with several creditors; negotiated settlements with Camperud and Stewart; prepared a motion to hold Debtor in contempt; and prepared a motion to compel Debtor to turn over rents and interests related to Costa Rican properties.

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	270.90	\$400.00 \$425.00	\$111,347.50

J. Luke Hendrix	12.1	\$325.00 \$275.00	\$3,777.50
Brian Manning	0.4	\$300.00	\$120.00
Nicholas L. Kohlmeyer	103.7	\$275.00 \$225.00 \$200.00	\$24,410.00
Gabriel P. Herrera	253.8	\$225.00 \$195.00	\$51,042.00
Benjamin Tagert	19.8	\$175.00 \$100.00	\$2,345.00
Ryan Ivanusich (Former Associate on Dckt. 551)	15.7	\$175.00 \$100.00	\$2,297.50
Law Clerk	2.8	\$100.00	\$280.00
Courier	4.2	\$50.00	\$210.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$195,829.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$4,940.96 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying		\$836.65
Postage		\$889.91
Other fees: Filing fees, FedEx delivery, parking, mileage, and data recovery		\$3,214.40
		\$0.00
Total Costs Requested in Application		\$4,940.96

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 \$195,829.50 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 \$4,940.96 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	\$195,829.50
Costs and Expenses	\$4,940.96

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 Desmond, Nolan, Livaich & Cunningham (“DNLC”) (“Applicant”), Attorneys for Kimberly Husted, 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 & 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 \$195,829.50
Expenses in the amount of \$4,940.96,

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

Final Ruling: No appearance at the July 9, 2020 Hearing is required.

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, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant (“Applicant”) for Kimberly 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 March 20, 2015, through May 29, 2020. The order of the court approving employment of Applicant was entered on March 23, 2015. Dckt. 77. Applicant requests fees in the amount of \$8,762.50 and costs in the amount of \$156.23.

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 reviewing Debtor’s business and personal financial records, preparing California and Federal Estate income tax returns, and performed administrative functions. 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 of Debtor’s Financial Records: Applicant spent 7.7 hours in this category. Applicant reviewed court and banking information, discussed the financial background of Debtor’s transactions, and reviewed payroll and equipment sale documents.

Tax Preparation: Applicant spent 14.8 hours in this category. Applicant communicated with Debtor’s CPA regarding 2014 tax returns, analyzed tax liabilities based on the sale of equipment, prepared income federal and state tax filings and communicated with Trustee, reviewed motions to sell and analyzed the tax liability of selling a real property, and worked with Trustee to resolve a tax issue.

Administrative Functions: Applicant spent 1.8 hours in this category. Applicant prepared the accountant declaration, the instant fee application, and employment documents including a detailed description of tax services for Trustee’s review.

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	24.3	\$345.00 (2015) \$365.00 (2016) \$375.00 (2017-2018) \$395.00 (2020)	\$8,762.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$8,762.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$156.23 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.20 per page	\$129.40
Postage		\$26.83
		\$0.00
Total Costs Requested in Application		\$156.23

In looking at the costs, Applicant states that they charge clients \$0.20 a page for photocopies. Commonly, a cost of \$0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is \$0.20 a page in 2020. Indeed, the court has reduced Applicant's copying costs by half on three other separate occasions under three separate cases in the last four months. If Applicant's photo copy expenses are \$0.20 a page, they only need provide evidence of such to the court to get the reimbursement. But absent such evidence, the court does not just approve whatever amount is stated.

The court reduces the photocopy charge to \$0.10 a page, thus reducing costs to \$64.70. This is without prejudice to Applicant documenting that the actual cost for photocopies is more than \$0.10 a page and that such higher amount is reasonable. FN.1

FN. 1. The court recalls a case from a few years back where the attorney asserted that the \$0.25 a page copy fee was the actual cost he paid a third-party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney \$0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that \$0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.

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 \$8,762.50 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 \$91.53 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	\$8,762.50
Costs and Expenses	\$91.53

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 Gabrielson & Company (“Applicant”), Accountant for Kimberly Husted, 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 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 \$8,762.50
Expenses in the amount of \$91.53,

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

Final Ruling: No appearance at the July 9, 2020 Hearing is required.

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, parties requesting special notice, and Office of the United States Trustee on May 25, 2020. By the court's calculation, 45 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). The defaults of the non-responding parties and other parties in interest are entered.

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

Loris Bakken, the Attorney ("Applicant") for Kimberly 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 October 3, 2019, through June 11, 2020. The order of the court approving employment of Applicant was entered on October 8, 2019. Dckt. 27. Applicant requests fees in the amount of \$7,110.00 and costs in the amount of \$114.80.

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 general case administration; employment of a realtor and the sale of real property; and advising Trustee regarding legal issues connected to a tenant leasing property of the Estate.

The Estate has \$42,715.51 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.

Employment of Realtor and Sale of Real Property: Applicant spent 15.0 hours in this category. Applicant reviewed the listing agreement and addendum, preliminary title report, prepared and filed an application to employ a realtor, communicated with the realtor, prepared and filed the Motion to Sell Real Property, and assisted the title company in resolving issues that arose at closing.

Legal Issues Connected to a Tenant Leasing Property of the Estate: Applicant spent 5.1 hours in this category. Applicant reviewed an eviction letter sent by Debtor to the tenant and utility bills; advised Trustee of tenant's rights; and communicated with the tenant to cooperate on allowing inspections to be conducted and procedures in order to get the property to be sold.

General Case Administration: Applicant spent 3.6 hours in this category. Applicant prepared Bakken's fee agreement and employment application.

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
Loris Bakken	23.7	\$300.00	\$7,110.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$7,110.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$114.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$60.50
Copying	\$0.10 per page	\$42.80
Certified Copy of Order		\$11.50
		\$0.00
Total Costs Requested in Application		\$114.80

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 \$7,110.00 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 \$114.80 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	\$7,110.00
Costs and Expenses	\$114.80

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 Loris Bakken (“Applicant”), Attorney for Kimberly Husted, 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 Loris Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$7,110.00

Expenses in the amount of \$114.80,

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