

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

August 8, 2024 at 10:30 a.m.

1. 21-90484 -E-11 BSH -13	TWISTED OAK WINERY, LLC Brian Haddix	MOTION FOR COMPENSATION FOR BRIAN S. HADDIX, DEBTORS ATTORNEY(S) 7-18-24 [248]
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SUBCHAPTER V

Item 1 thru 4

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 in Possession's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2024. By the court's calculation, 21 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).

NOTICE AS A MOTION UNDER LBR 9014-1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held with the court requesting an order approving the Final Application for Compensation and Reimbursement of Expenses by Haddix Law Firm. The court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The Motion for Allowance of Professional Fees was 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

August 8, 2024 at 10:30 a.m.

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, -----
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The Motion for Allowance of Professional Fees is granted.
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Brian S. Haddix, the Attorney (“Applicant”) for Twisted Oak Winery, LLC, the Debtor in Possession (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 14, 2022, through July 18, 2024. The order of the court approving employment of Applicant was entered on October 20, 2021. Dckt. 32. Applicant requests fees in the amount of \$14,720 and no costs. Mot. 5:11, Docket 248.

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 representing Debtor in Possession as bankruptcy counsel in all aspects of this chapter 11 case, being required to spend significant time responding, negotiating, or otherwise communicating with, among others, counsel for secured creditors, Debtor in Possession’s unsecured creditors, and the Office of the United States Trustee, the Subchapter V Trustee, other professionals employed in this case, and various other interested parties. Mot. 4:22-26, Docket 248. 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 11.1 hours in this category. Applicant prepared statement of financial affairs, schedules, list of contracts, U.S. Trustee interim statements and operating reports, and communicated with the U.S. Trustee and general creditor inquiries. *Id.* at 5:19-6:11.

Fee/Employment Applications: Applicant spent 5.4 hours in this category. Applicant prepared employment and fee applications for himself or others, and prepared motion to establish interim procedures. *Id.* at 6:13-25..

Fee/Employment Objections: Applicant spent 4.6 hours in this category. Applicant reviewed and advised the professional James Bielenberg regarding the U.S. Trustee's objection to his fees. *Id.* at 7:1-12.

Claims Administration and Objections: Applicant spent .8 hours in this category. Applicant addressed issues related to specific claim inquiries, bar date motions, analyses, and objections and allowances of claims. *Id.* at 7:14-25.

Plan and Disclosure Statement: Applicant spent 14.9 hours in this category. Applicant formulated, presented, confirmed, the Plan and Disclosure Statement. Applicant ensured the Plan and Disclosure Statement complied with all related orders and ruled. *Id.* at 7:27-8:25.

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Brian Haddix	36.8	\$400.00	<u>\$14,720.00</u>
Total Fees for Period of Application			\$14,720.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$52,435.40	\$52,435.40
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$52,435.40	

Costs & Expenses

Applicant is not seeking reimbursement for any costs.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$14,720.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$14,720.00
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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 Brian S. Haddix (“Applicant”), Attorney for Twisted Oak Winery, LLC, the Debtor in Possession, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Brian S. Haddix is allowed the following fees and expenses as a professional of the Estate:

Brian S. Haddix, Professional employed by the Debtor in Possession

Fees in the amount of \$14,720.00,

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

IT IS FURTHER ORDERED that the fees and costs pursuant to this Motion, and fees in the amount of \$52,435.40 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Reorganized Debtor, as Plan Administrator, is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

2. [21-90484-E-11](#)
[LNH-1](#)

TWISTED OAK WINERY, LLC
Brian Haddix

MOTION FOR COMPENSATION FOR
LISA HOLDER, CHAPTER 11
TRUSTEE(S)
7-18-24 [255]

SUBCHAPTER V

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2024. By the court's calculation, 21 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 Trustee Fees 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, -----
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<p>The Motion for Allowance of Trustee Fees is granted.</p>
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Lisa Holder, the Chapter 11 Subchapter V Trustee, ("Applicant") for the Estate of Twisted Oak Winery, LLC ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 5, 2021, through July 18, 2024. Applicant was appointed as the Subchapter V trustee on October 5, 2021. Docket 7. Applicant requests fees in the amount of \$15,000 reduced from earned fees of \$16,410, and no costs. Mot. 2:18, Docket 255.

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 analyzed Debtor’s Petition, Schedules, and Statement of Financial Affairs; communicated with the U.S. Trustee regarding Debtor’s case; analyzed documents received from Debtor and Debtor’s attorney for the initial debtor interview and the meeting of creditors; participated in the Meeting of Creditors; discussed the case with Debtor’s attorney and participating creditors; analyzed Debtor’s status conference statements, and monthly operating reports; attended Chapter 11 status conferences; analyzed motions filed by Debtor and interested parties and attended motion hearings; assisted with plan preparation and modifications with Debtor and creditors; analyzed Debtor’s Plan of Reorganization and communicated with Debtor, creditors, and the Office of the United States Trustee regarding the plan; worked with Debtor on plan amendments/modifications and the order confirming the plan; prepared monthly reports required by the U.S. Trustee; and prepared this fee application. Decl. 3:19-4:3, Docket 257. 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 7.1 hours in this category. Applicant prepared documents required by the U.S. Trustee for my appointment, communicated with the U.S. Trustee, analyzed documents filed with the bankruptcy court during the case, communicated with Debtor’s counsel and interested parties, and attended status conferences. Decl. 4:13-17, Docket 257.

Meeting and Communications with Creditors: Applicant spent 6.4 hours in this category. Applicant analyzed initial debtor interview documents, and participated in the Initial debtor interview, and participated in the meeting of creditors. *Id.* at 4:18-21.

Fee/Employment Applications: Applicant spent 2 hours in this category. Applicant prepared the fee application. *Id.* at 4:22-23.

Fee/Employment Applications of Others: Applicant spent 1.2 hours in this category. Applicant analyzed Debtor’s attorney’s and other professionals’ employment applications, and fee applications. *Id.* at 4:24-26.

Cash Collateral Use/Financing: Applicant spent .3 hours in this category. Applicant analyzed Debtor's motions to use cash collateral and attended hearings, analyzed stipulations. *Id.* at 5:8-10.

Claim Administration/Fixing Deadlines: Applicant spent 1.7 hours in this category. Applicant analyzed Debtor's objection to proof of claim filed by Mechanics Bank, and the dispute with Mechanics. *Id.* at 5:11-13.

Plan of Reorganization: Applicant spent 36 hours in this category. Applicant worked with Debtor and parties in interest on plan terms, analyzed Debtors Plan of Reorganization, and worked with parties toward confirmation; significant post-confirmation activity ensued, which resulted in a modification after confirmation, which changed the non-consensual plan into a consensual plan with the filing of stipulations and plan amendments for consensual treatment. *Id.* at 5:14-20.

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
Lisa Holder	54.7	\$300.00	<u>\$16,410.00</u>
Total Fees for Period of Application			\$16,410.00 (only requesting \$15,000 in this Motion)

Costs & Expenses

Applicant is not seeking reimbursement for costs.

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 \$15,000 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$15,000
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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 Lisa Holder, the Chapter 11 Subchapter V Trustee, (“Applicant”) for the Estate of Twisted Oak Winery, LLC (“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 Lisa Holder is allowed the following fees and expenses as a professional of the Estate:

Lisa Holder, Professional employed on behalf of the Estate of Twisted Oak Winery, LLC

Fees in the amount of \$15,000,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as the Chapter 11 Subchapter V Trustee for the Estate of Twisted Oak Winery, LLC.

IT IS FURTHER ORDERED that the Reorganized Debtor, as Plan Administrator, Debtor in Possession, is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

3. [21-90484-E-11](#) **TWISTED OAK WINERY, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
10-4-21 [\[1\]](#)

Debtor’s Atty: Brian S. Haddix

Notes:

Continued from 6/27/24 to be conducted in conjunction with the Motion for Entry of Discharge and closing of the Case, and counsel for the Debtor/Debtor in Possession request for allowance of attorney’s fees and costs, if any.

Debtor’s Chapter 11 Subchapter V Status Report filed 7/18/24 [Dckt 253]

[LNH-1] First and Final Application under § 330 for Compensation by Lisa Holder as Subchapter V Trustee filed 7/18/24 [Dckt 255]

The Status Conference is concluded and removed from the Calendar.
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SUBCHAPTER V

Final Ruling

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 in Possession’s Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Discharge 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 Entry of Discharge, Final Decree and Order Closing Case is granted.

The Motion for Entry of Discharge, Final Decree and Order Closing Case has been filed by Twisted Oak Winery, LLC (“Debtor in Possession”). 11 U.S.C. § 1141 states:

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title;
or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

Therefore, upon confirmation of the Plan, 11 U.S.C. § 1141(d) authorizes a discharge as to the Debtor in Possession, so long as the language of the Plan or the Order confirming does not alter or otherwise qualify the right to discharge.

The Plan confirmed by this court states the following language surrounding discharge:

If the Debtor's Plan is confirmed under §1191(a), on the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in §1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt:

(i) imposed by this Plan; or

(ii) to the extent provided in §1141(d)(6).

Modified Plan at 6, Docket 208. The language of the Plan or the Order confirming does not alter or otherwise qualify the right to discharge in this case. This Plan was confirmed under 11 U.S.C. § 1191(a). *See* Order Confirming, Docket 223. Therefore, Debtor in Possession is granted a discharge as provided for under 11 U.S.C. § 1141(d).

Fed. R. Bankr. P. 3022 instructs when a court should enter a Final Decree. That rule states:

After an estate is **fully administered** in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

Fed. R. Bankr. P. 3022 (emphasis added). "Fully administered" is described in the advisory committee notes, stating that the court should consider:

(1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the

property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022 advisory committee's note to 1991 amendment. 9 COLLIER ON BANKRUPTCY ¶ 3022.01 states, when deciding to issue a final decree closing the case, that "[t]hese factors are not exhaustive, and need not all be satisfied before a final decree can be entered. . . The decision whether an estate has been fully administered falls within the discretion of the bankruptcy court."

Here, the court finds that the Estate has been fully administered. There is a final order confirming the Plan. Distributions are being made under the Plan. Debtor in Possession has assumed the business under the Plan and has been making distributions. Finally, there are no outstanding motions or contested matters open in this case. As such, the court determines that the Estate has been fully administered and the court finds a final decree closing the case to be warranted.

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 Entry of Discharge, Final Decree and Order Closing Case filed by Twisted Oak Winery, LLC ("Debtor in Possession") 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 granted, and the court shall enter the discharge for Twisted Oak Winery, LLC in this case as provided for in 11 U.S.C. § 1141(d).

IT IS FURTHER ORDERED that the case is hereby closed, that the trustee is hereby discharged, that the bond of the trustee is hereby canceled, and that the surety of the trustee's bond is hereby released from further liability thereunder, except any liability which may have accrued during the time such bond was in effect.

SUBCHAPTER V

Item #2 on 2:00 calendar
CH 11 Status Conference

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 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2024. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline for Filing Chapter 11 Plan 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, -----

<p>The Motion to Extend Deadline for Filing Chapter 11 Plan is granted.</p>
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Debtor in Possession Jeffrey Michael McPhee ("Debtor in Possession") files this Motion requesting an Order from the court granting a 30-day extension on his deadline to file a Chapter 11 Subchapter V Plan. Debtor in Possession filed the instant case on April 21, 2024. 11 U.S.C. § 1189(b) provides that a Plan must be filed not later than 90 days after relief has been granted. Here, Debtor in Possession's deadline to file a Plan would have been on July 22, 2024.

Debtor in Possession submits his attorney's Declaration in support. Decl., Docket 31. Mr. Johnston testifies Debtor in Possession needs this 30 more days to file a realistically confirmable Plan. Decl. 2:10-12, Docket 31. Mr. Johnston informs the court that this is an extremely complicated case, Debtor in Possession holding interests in several operating entities, and the complexity of the case has led to several lengthy meetings of creditors where the 341 Meeting has not yet been concluded. *Id.* at 2:13-24. What

Debtor in Possession hopes will be the final meeting is set for July 31, 2024. *Id.* at 2:24-25. Debtor in Possession's 2023 federal and state income tax returns have not yet been prepared by his accountant. Without these returns, it is unknown whether there will be a large tax liability to be paid through a plan, or a refund which would affect the liquidation analysis. *Id.* at 3:12-15. Finally, Mr. Johnston reminds the court of his various health complications in impeding progress, which have now largely been resolved. *Id.* at 3:3-11.

The Chapter 11 Subchapter V Trustee, Lisa Holder, filed a nonopposition on August 5, 2024.

DISCUSSION

11 U.S.C. § 1189(b) states:

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

According to Collier's Treatise on Bankruptcy, in the Chapter 12 context, "[t]he phrase 'substantially justified' was not explained in the legislative history, and so there was no guidance on how the phrase was to be interpreted." 8 COLLIER ON BANKRUPTCY ¶ 1221.01[2] (8 COLLIER ON BANKRUPTCY ¶ 1189.02 noting in the Subchapter V context, "[t]he same deadline for filing a plan and standard for its extension appl[ies] in a chapter 12 case."). The phrase "attributable to circumstances for which the debtor should not justly be held accountable," makes clear that "Congress intended by this change to make it more difficult for debtors to obtain extensions." 8 COLLIER ON BANKRUPTCY ¶ 1221.01[2].

Here, the court finds the extension is warranted. Factors exist in this case causing delay for which the Debtor in Possession should not justly be held accountable. It is difficult to put together a viable Plan before the 341 Meeting has been concluded, as well as Debtor in Possession having the tax returns filed and ready for the year 2023 impeding Plan progress. The court understands the complexity in this case and finds an extension to be warranted.

For these reasons, the Motion is granted and the deadline to file a Chapter 12 Plan is extended up and through August 21, 2024.

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 Extend Deadline to File a Chapter 12 Plan filed by Rhett Burgess ("Debtor in Possession") 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 granted and the deadline to file a Chapter 11 Subchapter V Plan is extended up and through August 21, 2024.

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, Trustee’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2024. By the court’s calculation, 31 days’ notice was provided. 14 days’ notice is required.

The Motion for Turnover 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, -----.

<p>The Motion for Turnover is granted.</p>

Gary R. Farrar, the Chapter 7 Trustee, (“Movant,” “Trustee”) in the above entitled case and moving party herein, seeks an order for turnover as to the following parcels of real property:

1. 23955 Cedar Hill Lane, Twain Harte, California 95383 (the “Twain Harte Property”);
2. 1027 W. 18th Street, Merced, California 95340 (the “1027 Merced Property”); and
3. 1035 W. 18th Street, Merced, California 95340 (the “1035 Merced Property”).

(collectively, “Property”). Movant alleges in his Motion:

1. Trustee asked John Mendoza (“Debtor”) to turn over possession of the Property but the Debtor has refused to do so even though it is indisputably valuable property of the estate. Therefore, the Trustee respectfully requests that this Court order the Debtor to vacate and turn over the Property pursuant to 11 U.S.C. Sections 521, 541, and 542 and Rule 7001 of the Federal Rules of Bankruptcy Procedure. Mot. 1:23-27, Docket 390.
2. On May 19, 2023, this Court entered an order granting Trustee’s motion to compromise controversy with creditor WVJP 2021-4, LP regarding the liquidation the Property. *Id.* at 2:9-11. *See* Order, Docket 74.
3. Mr. Farrar and Creditor WVJP 2021-4, LP filed a joint objection to the Debtor’s homestead exemption in the Twain Harte Property. A trial was held and, on March 15, 2024, this Court entered its order sustaining the objection and disallowing the exemption “as to Creditor’s rights and interest created by its Judgment Lien recorded on December 11, 2017”. *Id.* at 2:22-25.
4. In early April 2024, Mr. Farrar had several telephone conversations with Debtor’s counsel, Peter Macaluso, regarding the Debtor’s willingness to cooperate in the sale of the Property; however, Mr. Macaluso stated that the Debtor wanted a portion of the sale proceeds in exchange. *Id.* at 3:4-7.
5. Movant has asked for documentation regarding the Property. Documentation of current loan statements for the loans or liens on the Property, insurance policies covering the Property, contact information for tenants in the Property as well as copies of the leases, an accounting of the rents paid postpetition and deposits held, and a list of the utilities for each Property have still not been provided to Movant. *Id.* at 3:7-10.
6. On June 10, 2024, Trustee’s general counsel, Loris L. Bakken, sent emails to Mr. Macaluso stating that Trustee is preparing to move forward to market the Property for sale and, to ensure that the realtor will have access to show the Property when necessary, Trustee requested that the Debtor vacate the Property and turn over possession to Trustee by the close of business on June 24, 2024. *Id.* at 3:22-26.
7. Trustee has a real estate advisor and broker employed and approved by the court. *Id.* at 3:27-4:7. *See* Orders, Docket 368, 376.
8. On June 17, 2024, the Debtor filed an Amended Schedule C claiming an exemption in the Twain Harte Property of \$31,925.00 under California Code of Civil Procedure Section 703.140(b)(1). *Id.* at 4:9-11.
9. On June 25, 2024, the Debtor had not turned over possession of the Property to Trustee, and the Debtor had failed to respond to Trustee’s demand for turnover. Thus, Trustee telephoned Mr. Macaluso who

promised to get back to Trustee by Friday, June 28, 2024; however, Trustee did not receive a response by June 28, 2024. *Id.* at 4:15-18.

10. The Debtor has failed to respond to the Trustee's multiple demands and has failed to turn over to Trustee possession of the Property. *Id.* at 5:13-14.

Movant submits the declarations of Bob Brazeal, Loris Bakken, and Gary Farrar in support. Dockets 392, 394, 305. Mr. Brazeal, Movant's real estate advisor, testifies as to the value of the Properties. Mr. Braziel explains the Twain Harte Property has a value range of \$1,100,000 to \$1,300,000; the 1027 Merced Property has a value range of \$294,000 to \$319,000; and the 1035 Merced Property has a value range of \$276,000 to \$300,000. Decl. 2:3-5, Docket 392.

Ms. Bakken testifies as to the email correspondence between her and Mr. Macaluso, authenticating those facts and the accompanying Exhibits. Decl., Docket 394.

Mr. Farrar, Movant here, testifies as to the facts of his communications with Mr. Macaluso, and Mr. Macaluso's failure to respond or turn over the Property. Decl., Docket 395.

DEBTOR'S OPPOSITION

Debtor filed an Opposition and Statement of Disputed Facts on July 23, 2024. Dockets 403, 404. Debtor opposes the Motion on the following grounds:

1. Based on the Debtor's information and belief, none of the first two properties would benefit the Estate, after cost of sale and taxes, nor would the 3rd, Twain Harte property in any meaningful way given the location and condition of the Property, and the Debtor's wildcard exemption. Opp'n 1:23-27, Docket 403.
2. No determination has been given as to the value of the "estate asset" and whether the \$30,000.00 "wildcard" is sufficient to nullify a return and justify the abandonment of each property, individually. *Id.* at 2:2-6.
3. The Sale of the Twain Harte Property is of No consequential benefit to the estate AFTER Sale, Commission, Cost of Sale, Property Taxes, Wildcard Exemption, and Federal Taxes. $(\$900,000 - (\$727,914 + \text{Non-Interest } \$35,000) - \$76,000 - \$31,925 = 30,161)$. *Id.* at 2:23-28.
4. The Sale of 1027 Merced Property is of No consequential benefit to the estate after Sale, Commission, Cost of Sale, Property Taxes, and Federal Taxes. $(\$150,000 - \$105,026 - \$12,000 = \$ 32,974)$. *Id.* at 3:1-4.
5. The Sale of 1035 Merced Property is of No consequential benefit to the estate after Sale, Commission, Cost of Sale, Property Taxes, and Federal Taxes. $(\$135,000 - \$99,527 - \$10,800 = \$ 24,673)$ *Id.* at 3:5-8.

6. A motion to compel a turnover of properties is premature because further analysis and proof as to the value of the estate is not only requested, but must be necessary and required in a court of equity. *Id.* at 3:22-25.
7. In this motion there is a lack of an analysis as to what is expected to be recouped mathematically, after taxes and ALL costs. As such, there is no analysis, but, only a premature demand which results in the Debtor's homelessness. *Id.* at 4:2-6.
8. The Debtor has not been given an opportunity to negotiate as to keeping his home, or an orderly relocation as the small sum, was denied which would allow him to relocate. Absent an analysis as to what is projected to benefit the estate, and allowing the debtor to overbid, justice is not served in this "David v. Goliath" encounter. *Id.* at 4:7-12.

Debtor did not file any evidence in support of the Opposition. (This Motion having been filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), opposition may be presented orally at hearing, and the court may set a further briefing schedule for the filing of opposition pleadings.)

MOVANT'S REPLY

Movant filed a Reply to Debtor's Opposition on August 1, 2024. Docket 406. Movant states:

1. The Opposition is without merit. Debtor admits to failing to turn over the Property even after Trustee demanded he do so. Reply 1:23-28, Docket 406.
2. Debtor states in his Non-Disputed Facts that there has been no determination as to the value of each individual property when considering the costs of sale and tax consequences. Trustee reminds Debtor this is inaccurate. Trustee has provided value for each individual piece of property that shows there will be a return for the Estate. *Id.* at 2:14-3:13.
3. Trustee contends the remainder of Debtors "Non-Disputed Facts." *See* Reply 3:16-4:18.
4. As to the Disputed Facts, Trustee again reminds Debtor he has met his burden in showing that the Property will net a return for the Estate. *Id.* at 4:5:7.
5. Trustee states that there outstanding property tax on the Property, and he has received payoff statements for each of the liens on the Property. *Id.* at 5:9-15.
6. Trustee states he had several communications with Debtor about possibly applying a homestead exemption to the 1027 Merced Property or the 1035 Merced Property, but Debtor failed to respond to Trustee's communications. There is no merit in Debtor's argument that Debtor has

not been given opportunity to negotiate keeping his home or given a small sum for orderly relocation. *Id.* at 15-23.

7. Trustee has established that the Property is valuable property of the Estate and it is the Debtor's duty to turn over to the Trustee all property of the Estate. *Id.* at 6:24-28.

Movant submits the Declarations of Loris Bakken (Docket 408), Gary Farrar, (Docket 407), and Brian Brazeal (Docket 409) in support of the Reply. Mr. Farrar testifies to the conversations he had with Mr. Macaluso regarding a potential homestead exemption Debtor could claim in the Merced Properties, as well as the return for the Estate he anticipates to receive from the sale of the Properties. Ms. Bakken authenticates the Exhibits that show there are no tax obligations on the Properties as well as what the payoff amounts would be for each Property. Finally, Mr. Brazeal testifies he walked through the Merced Properties with Debtor and his attorney, leading to Mr. Brazeal's valuation of \$300,000 for each of the Merced Properties.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Debtor makes the argument that there is no equity or value in the Property that a Chapter 7 Trustee can realize for the benefit of creditors in this case. Debtor gives no evidence in support of this claim.

To the contrary, Trustee has submitted evidence that the Property values are much higher than Debtor's estimations, and such sales prices would realize a benefit to the creditors of the estate.

Moreover, Debtor makes his argument without citing to any law in support. Debtor gives the court no legal basis why it should conclude that his argument has merit. Debtor makes the arguments that, because Debtor has determined there is no value for the estate, the Motion should be denied. Nowhere in 11 U.S.C. §§ 541 or 542 does the court have a legal basis to deny this Motion based on the Debtor's opinion that there is no equity for the benefit of creditors. Rather, 11 U.S.C. § 542(a) states the Property shall be turned over, "unless such property is of inconsequential value or benefit to the estate." The court determines here that the Property is not of inconsequential value to the estate, Movant filing evidence showing that there is value in the Property for the benefit of creditors.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 Turnover of Property filed by Gary R. Farrar, the Chapter 7 Trustee, ("Movant") 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 for Turnover of Property is granted.

IT IS FURTHER ORDERED that John Pierre Mendoza ("Debtor") shall deliver on or before ~~xxxx, 202x~~, possession of the following parcels of real property:

1. 23955 Cedar Hill Lane, Twain Harte, California 95383 (the "Twain Harte Property");
2. 1027 W. 18th Street, Merced, California 95340 (the "1027 Merced Property"); and
3. 1035 W. 18th Street, Merced, California 95340 (the "1035 Merced Property"),

with all of their personal property, personal property of any other persons that Debtor allowed access to the Property; and any other person or persons that Debtor allowed access to the Property removed from the Property.

FINAL RULINGS

7. [22-90160-E-11](#) **EAGLE LEDGE FOUNDATION,** **MOTION FOR COMPENSATION BY THE**
[DCN-29](#) **INC.** **LAW OFFICE OF MAUCK & BAKER,**
Dennis Miller **LLC FOR WHITMAN H. BRISKY,**
SPECIAL COUNSEL(S)
7-3-24 [440]

Item 7 thru 9

Final Ruling: No appearance at the August 8, 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’s Attorney, attorneys of record who have appeared in the case, 20 largest creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. 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). 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.

Mauck & Baker, LLC, by Whitman H. Brisky, the Special Counsel (“Applicant”) for Eagle Ledge Foundation, Inc., the Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 5, 2022, through May 17, 2024. Applicant’s normal hourly rate was \$400, but Applicant is seeking fees at the reduced hourly rate of \$350. Mot. 5:15-17, Docket 440. The order of the court approving employment of Applicant was entered on August 5, 2022. Dckt. 118. Applicant requests fees in the amount of \$97,315.00 and costs in the amount of \$154.17. Mot. 5:28, Docket 440.

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 obtaining Post Judgment Motion Practice in Foreclosure, obtaining possession of the Property (4130-42 S. Indiana Avenue, Chicago, Illinois 60653 and adjoining parking lot), prosecuting the Ordinance Violation Case, negotiation to sell the Property, issues surrounding the historic preservation claims regarding the Property, issues with title clearance, tax and water bills, the preparation of closing documents, and issues occurring in the bankruptcy proceeding. Mot. 6:11-24, Docket 440. 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.

POST-JUDGMENT MOTION PRACTICE IN FORECLOSURE CASE: Applicant spent 50.1 hours in this category. Applicant worked to defend against Tabernacle Missionary Baptist Church of Chicago’s (“TMBC”) efforts to frustrate foreclosure and transfer of title of the Property. *Id.* at 6:27-7:6.

OBTAINING POSSESSION OF THE PROPERTY: Applicant spent 46.7 hours in this category. Applicant placed the writ for eviction with the local sheriff, monitored the sheriff’s list of evictions coming up, and ensured there was someone at the Property when the sheriff arrived to change locks and take possession. Extra time was spent in this category due to delays by TMBC. *Id.* at 7:9-24.

CITY OF CHICAGO BUILDING CODE VIOLATIONS: Applicant spent 18.3 hours in this category. Applicant worked with Debtor, the City of Chicago, and Debtor’s local representatives to secure the property and make those emergency repairs necessary to protect the public from injury and satisfy the City of Chicago. *Id.* at 8:12-14.

NEGOTIATION OF REAL ESTATE SALE CONTRACT: Applicant spent 73.1 hours in this category. Applicant negotiated with the eventual purchaser of the Property through its counsel, Jenner & Block of Chicago, Illinois. *Id.* at 8:22-23.

HISTORIC PRESERVATION ISSUES: Applicant spent 10.1 hours in this category. Applicant expended time to determine whether the attempt to so designate the Property as a historic landmark could be successful, informing the Buyer of the potential for such designation, determining whether Debtor and/or

Buyer as a religious institution could block such designation, and completing the contract before any such designation could be completed. *Id.* at 9:17-20.

TITLE CLEARANCE: Applicant spent 53.8 hours in this category. Applicant worked with the title company to transfer good title to the real estate. *Id.* at 9:24-10:6.

REAL ESTATE TAXES: Applicant spent 69 hours in this category. Applicant worked to determine and ultimately pay outstanding taxes before buyer could take title to the Property. *Id.* at 10:9-28.

WATER BILL: Applicant spent 4.2 hours in this category. Applicant negotiated the water bill that resulted from a burst pipe to a more reasonable number, which was paid and the Sheriff's deed was recorded. *Id.* at 11:25-12:8.

PREPARATION OF CLOSING DOCUMENTS: Applicant spent 8.6 hours in this category. Applicant prepared the deed, bill of sale, various affidavits and forms required by the title company, tax forms and other documents. *Id.* at 12:11-15.

CHAPTER 11 BANKRUPTCY ISSUES: Applicant spent 38.4 hours in this category. The existence of the Chapter 11 case complicated the legal work by imposing additional legal requirements, such as approval of the contract by the Bankruptcy Court, which caused additional time to be spent not typically necessary in connection with a commercial real estate transaction. Applicant worked with Debtor's bankruptcy counsel to gain bankruptcy court approval for various matters. *Id.* at 12:26-13:15.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The following rates were in place

1. Richard C. Baker, \$350 per hour
2. Whitman H. Brisky, \$350 per hour
3. Noel W. Sterett, \$300 per hour
4. Associates, \$200 per hour
5. Paralegals, \$135 per hour.

Legal services Agreement, Ex. B, Docket 444. The itemized task billing statement for each professional is included as Exhibit C at Docket 444.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$154.17 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Check to Sheriff of Cook County for sheriff request for eviction	-----	\$60.50
Check to Clerk of Cook County Circuit Court for certification of eviction order		\$12.00
Payment to Clerk of the Circuit Court for certification fee		\$6.13
Check to Cook County Assessor for Estimates of Redemption		\$13.00
Cook County Clerk fee for Search to Produce Bill		\$13.27
Order Estimate of Redemption in Cook County Clerks		\$13.27
Court Call fee for remote attendance on 5/16/2024		\$36.00
Total Costs Requested in Application		\$154.17

The court does not reimburse for court call expense. Fees are approved in the amount of \$118.17, the requested fees less the cost of court call.

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 Fees in the amount of \$97,315.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession 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 \$118.17 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$97,315.00
Costs and Expenses	\$118.17

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 Mauck & Baker, LLC (“Applicant”), Special Counsel for Eagle Ledge Foundation, Inc., the Debtor in Possession, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mauck & Baker, LLC is allowed the following fees and expenses as a professional of the Estate:

Mauck & Baker, LLC, Professional employed by the Debtor in Possession

Fees in the amount of \$97,315.00
Expenses in the amount of \$118.17,

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

IT IS FURTHER ORDERED that Reorganized Debtor, as Plan Administrator, is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

8. [22-90160-E-11](#) **EAGLE LEDGE FOUNDATION,** **MOTION FOR COMPENSATION BY THE**
[DDM-29](#) **INC.** **LAW OFFICE OF BUSH ROSS, P.A.**
Dennis Miller **FOR KATHLEEN L. DISANTO,**
DEBTORS ATTORNEY(S)
7-3-24 [431]

Final Ruling: No appearance at the August 8, 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’s Attorney, attorneys of record who have appeared in the case, 20 largest creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. 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). 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.

Bush Ross, P.A., by and through Kathleen DiSanto, the Attorney (“Applicant”) for Eagle Ledge Foundation, Inc., the Debtor in Possession (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. Applicant was granted ’ fees of \$92,482.00 and expenses of \$2,284.29 in its First Interim Application. Docket 332. The court authorized all fees requested, but the court only awarded 80% of the fees in its Order, holding back \$18,496.40. *Id.*

Applicant requests in this Motion that the prior interim fee application be approved on a final basis, authorization for payment of the \$18,496.40 holdback amount, as well as final fees in the amount of \$32,212.00 and costs in the amount of \$75.62 be approved for work performed during the period of October 1, 2023, through May 31, 2024.

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: (a) rendering legal advice with respect to the Debtor’s powers and duties as debtor-inpossession and general case administration, (b) obtaining through Rule 2004 subpoena the addresses of all certificate holders, (c) responding in opposition to the United States Trustee’s motion to dismiss and appearing at hearings in connection with the motion to dismiss, (d) addressing multiple issues relating to the sale of the Indiana Avenue property, (e) communicating with certificate holders regarding efforts towards plan confirmation, (f) preparing Bush Ross’s first interim application for compensation and reimbursement of expenses, (g) addressing United States Trustee’s objections to fee applications, (h) representation at continued hearings on cash collateral motion, (i) completing claims analysis and prepare spreadsheet for initial distributions to creditors, (j) preparing for hearing on approval of amended disclosure statement, and (k) preparing for hearing on confirmation of amended plan. Mot. 3:2-13, Docket 431. 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.

CASE ADMINISTRATION: Applicant spent 19.8 hours in this category. Applicant prepared monthly operating reports for the Debtor, but did not bill the time spent preparing the reports to the estate. Ms. DiSanto worked with Mr. Miller to respond to the United States Trustee’s motion to dismiss or convert the case to chapter 7 and argued the Debtor’s position at several hearings on the motion. Mot. 5:20-23, Docket 431.

ASSET DISPOSITION: Applicant spent 11.6 hours in this category. Applicant engaged with the Debtor on issues concerning the sale of the real property located at 4130 S. Indiana Avenue, Chicago, Illinois 60653 (the “Indiana Avenue Property”). In an effort to avoid duplication of services, Ms. DiSanto has not billed on issues where Mr. Miller has taken the lead. *Id.* at 5:25-28.

FEE/EMPLOYMENT APPLICATIONS: Applicant spent 6.10 hours in this category. Applicant prepared Bush Ross’s First Interim Fee Application, exhibits, and supporting declaration. *Id.* at 6:2-3.

FEE/EMPLOYMENT OBJECTIONS: Applicant spent 1.8 hours in this category. Applicant reviewed and resolved the United States Trustee’s objection to Bush Ross’s First Interim Fee Application. *Id.* at 6:5-6.

FINANCING/CASH COLLECTIONS: Applicant spent 2.5 hours in this category. Applicant sought authority to use cash collateral. Ms. DiSanto assisted the Debtor in preparing appropriate cash collateral budgets and the motions and supplemental pleadings necessary to obtain authority for the use of cash collateral during the pendency of the case. *Id.* at 6:8-12.

CLAIMS ADMINISTRATION AND OBJECTIONS: Applicant spent 2 hours in this category. Applicant reviewed and analyzed the filed proofs of claim and attachments and completed the claims reconciliation process. Ms. DiSanto worked with the Debtor to facilitate the initial distribution to Class 2 General Unsecured Creditors in accordance with the confirmed Amended Plan. *Id.* at 6:14-17.

PLAN/DISCLOSURE STATEMENT: Applicant spent 31.7 hours in this category. Applicant responded to and resolved the United States Trustee's objection to the amended disclosure statement and appeared at the hearings on the motion to approve the amended disclosure statement. Ms. DiSanto prepared subpoenas to TMI and Goldstar to obtain the direct contact information for the certificate holders to address the notice concerns raised by the Court and the United States Trustee. Ms. DiSanto reviewed the solicitation package and addressed issues concerning the service of the solicitation package. Applicant prepared the confirmation hearing, including drafting a declaration of Dr. Reid in support of confirmation of the amended plan, and prepared a ballot tabulation report. Ms. DiSanto represented the Debtor at the confirmation hearing and prepared the proposed order confirming the amended plan. *Id.* at 6:19-28.

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
Karen Kearney	1.3	\$125.00	\$162.50
Karen Kearney	1.2	\$185.00	\$222.00
Kathleen L. DiSanto	36.40	\$500.00	\$18,200.00
Kathleen L. DiSanto	32.10	\$425.00	<u>\$13,642.50</u>
Total Fees for Period of Application			\$32,227.00 (only requesting \$32,212 in the Motion)

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$92,482.00	\$73,985.60
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$92,482.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$75.62 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$2,284.29. Order, Docket 332.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Online Research	-----	\$75.62
Total Costs Requested in Application		\$75.62

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$32,212 are approved pursuant to 11 U.S.C. § 330, and prior Interim Fees in the amount of \$92,482.00 are approved pursuant to 11 U.S.C. § 330. Fees of \$32,212 are authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. The holdback amount of \$18,496.40 from the First Interim Application is also authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Second and Final Costs in the amount of \$75.62 and prior Interim Costs in the amount of \$2,284.29 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$32,212
Costs and Expenses	\$75.62

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 Bush Ross, P.A. (“Applicant”), Attorney for Eagle Ledge Foundation, Inc., the Debtor in Possession, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Bush Ross, P.A. is allowed the following fees and expenses as a professional of the Estate:

Bush Ross, P.A., Professional employed by the Debtor in Possession

Fees in the amount of \$32,212

Expenses in the amount of \$75.62,

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

IT IS FURTHER ORDERED that the fees and costs pursuant to this Motion, and fees in the amount of \$92,482.00 and costs of \$2,284.29 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the holdback amount of \$18,496.40 for fees from the First Interim Application are approved pursuant to 11 U.S.C. § 330. *See* Order, Docket 332 (authorizing the First Interim Fees requested in full, but holding back 20% of the fees).

IT IS FURTHER ORDERED that the Reorganized Debtor, as Plan Administrator, is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the August 8, 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’s Attorney, attorneys of record who have appeared in the case, 20 largest creditors, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on June 25, 2024 and July 1, 2024. By the court’s calculation, 44 and 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>

Lubin Olson & Niewiadomski LLP, by Dennis Miller, the Attorney (“Applicant”) for Eagle Ledge Foundation, Inc., the Debtor in Possession (“Client”), makes a Third and Final Request for the Allowance of Fees and Expenses in this case. Applicant was granted ’ fees of \$19,500 and expenses of \$943.37 in its First Interim Application. Docket 186. Applicant’s Second Interim Application sought fees of \$54,780 and costs of \$481.26. The court authorized all fees requested, but the court only awarded 80% of the fees in its Order, holding back \$10,956. Docket 331.

Applicant requests in this Motion that the two prior interim fee applications be approved on a final basis, authorization for payment of the \$10,956 holdback amount from the Second Interim Application, and final fees in the amount of \$68,275 and costs in the amount of \$710.85 be approved for work performed during the period of October 1, 2023, through May 30, 2024.

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 preparation and service of Applicant's Second Interim Application; services assisting on the preparation and approval of Debtor's amended disclosure statement: general case administration; a significant amount of time toward the negotiation and completion of the rider to the sale contract for Indiana Avenue and related property issues, including addressing the complexities of the parcel reorganization and past due tax status of the Indiana Avenue property (two parcels) and how that affected and altered the motion to sell Indiana Avenue; investigation of certificate holders' direct addresses and amending of Debtor's Master Mailing List; preparation and service of Debtor's Amended Plan confirmation package; and finally the actions to close the escrow on Indiana Avenue property, which is expected to generate about \$400,000 for the Estate. Mot. 5:11-20, Docket 422. 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.

AMENDED DISCLOSURE STATEMENT AND THE UNITED STATES TRUSTEE MOTION TO DISMISS: Applicant spent 13.8 hours in this category. Applicant reviewed the amended disclosure statement and amended plan for local rule compliance and service and prepared additions to the amended disclosure statement and amended plan. Mot. 8:3-19, Docket 422.

SECOND INTERIM FEE APPLICATION: Applicant spent 5.7 hours in this category. Applicant prepared and obtained the approval by Debtor of the Applicant's second interim fee application, and prepared, filed and served the second interim application. *Id.* at 5:22-6:2.

GENERAL CASE ADMINISTRATION ISSUES: Applicant spent 5.9 hours in this category. Applicant reviewed and analyzed case issues that arose as the case proceeded including finalizing cash collateral motions and service issues. Applicant attended case status conferences, which were usually set with the cash collateral hearings, to keep apprised of issues raised by the Court at these hearings. *Id.* at 9:4-7.

INVESTIGATION AND ACTIONS TO OBTAIN AND CONFIRM ALL CERTIFICATE HOLDERS DIRECT MAILING ADDRESSES: Applicant spent 7.2 hours in this category. Applicant sought all home or other direct addresses from GoldStar and TMI, both who refused to comply with written

demands and insisted they be served with subpoenas, to comply with service requirements. Applicant prepared an Amended Mailing List and to update the Court's electronic mailing list to avoid duplication of mailings addresses for certificate holders, i.e., at GoldStar and TMI and also direct mail. *Id.* at 6:21-7:9.

ACTIONS TO SERVE PLAN CONFIRMATION PACKAGE AND PREPARATION FOR AMENDED PLAN CONFIRMATION HEARING: Applicant spent 7.4 hours in this category. Applicant assisted in completing all documents to be served for the confirmation hearing and prepared and served the plan confirmation package, including ballots, to all creditors and interested parties, with direct service on all certificate holders. *Id.* at 10:15-18.

INDIANA AVENUE PROPERTY ANALYSIS AND NEGOTIATIONS OF RIDER: Applicant spent 19.7 hours in this category. Applicant entered into the contract to sell Indiana Avenue (or, the "Property") to The Bright Star Community Development Corp. ("Bright Star") in September 2023. Applicant addressed and explained the bankruptcy process and requirements during negotiation of the rider. *Id.* at 10:26-11:22.

ANALYSIS OF COMPLEX PARCEL HISTORY, TAXATION AND TAX EXEMPTION HISTORY AND AFFECT ON THE SALE: Applicant spent 47.3 hours in this category. Applicant analyzed the tax issues holding up a sale of the Property, including researching possible tax exemptions, and a potential 11 U.S.C. § 363(f) sale. *Id.* at 11:25-12:23.

THE MOTION TO SELL INDIANA AVENUE PROPERTY AND CLOSING AFTER THE EFFECTIVE DATE: Applicant spent 6.8 hours in this category. Applicant worked to have the Motion to Sell approved and the sale itself close. *Id.* at 12:26-13:11.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The following rates were in place

1. Partners, \$520 to \$950 per hour (Mr. Miller at \$600 per hour, Mot. 6:11, Docket 422)
2. Of Counsel, \$475 to 590 per hour
3. Associates, \$310 to 525 per hour
4. Legal Assistants, \$175 to 350 per hour (Mr. Miller's legal assistant did not bill for her time in this Application, Mot. 6:17, Docket 422).

Attorney Client Fee Agreement, Ex. 1, Docket 426. The itemized task billing statement for each professional is included as Exhibit 2 at Docket 426.

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$19,500.00	\$19,500.00

Second Interim	\$54,780.00	\$43,824.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$74,280.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$710.85 pursuant to this application. Costs of \$874.42 were approved in the First Interim Application, and costs of \$481.26 were approved in the Second Interim Application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
FEDERAL EXPRESS DELIVERY	-----	\$63.91
ABA POSTAGE		\$646.94
Total Costs Requested in Application		\$710.85

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. Third and Final Fees in the amount of \$68,275 are approved pursuant to 11 U.S.C. § 330, and prior Interim Fees in the amount of \$74,280.00 are approved pursuant to 11 U.S.C. § 330. Fees of \$68,275 are authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. The holdback amount of \$10,956 from the Second Interim Application is also authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

Third and Final Costs in the amount of \$710.85 and prior interim costs of \$1,355.68 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$68,275
Costs and Expenses	\$710.85

August 8, 2024 at 10:30 a.m.

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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 Lubin Olson & Niewiadomski LLP (“Applicant”), Attorney for Eagle Ledge Foundation, Inc., the Debtor in Possession, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Lubin Olson & Niewiadomski LLP is allowed the following fees and expenses as a professional of the Estate:

Lubin Olson & Niewiadomski LLP, Professional employed by Eagle Ledge Foundation, Inc., the Debtor in Possession

Fees in the amount of \$68,275

Expenses in the amount of \$710.85,

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

IT IS FURTHER ORDERED that prior Interim Fees in the amount of \$74,280.00 and prior Interim Costs in the amount of \$1,355.68 are approved pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the holdback amount of \$10,956 for fees from the Second Interim Application are approved pursuant to 11 U.S.C. § 330. *See* Order, Docket 331 (authorizing the Second Interim Fees requested in full, but holding back 20% of the fees).

IT IS FURTHER ORDERED that the Reorganized Debtor, as Plan Administrator, is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Final Ruling: No appearance at the August 8, 2024 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, and Debtor's Attorney, as stated on the Certificate of Service on July 14, 2024. The court computes that 25 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: \$338.00 due on June 28, 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.

Final Ruling: No appearance at the August 8, 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, Trustee’s Attorney, creditors that have filed claims, and Office of the United States Trustee on June 27, 2024. By the court’s calculation, 42 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.

Reynolds Law, LLP, the Attorney (“Applicant”) for Geoffrey M. Richards, 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 January 30, 2023, through June 25, 2024. The order of the court approving employment of Applicant was entered on February 15, 2023. Dckt. 23. Applicant requests fees in the amount of \$7,560.00 and no costs.

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 recovering \$50,000 for the bankruptcy estate from debtor's ex-spouse as part of a marital dissolution decree issued in Hawaii. Mot. at 2:1-8, Docket 30. The Estate has \$49,341.2 of unencumbered monies to be administered as of the filing of the application. *Id.* at 2:4. 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 7.2 hours in this category. Applicant assisted the Trustee by handling case-status and other questions from creditors and parties in interest; communicated with the Trustee regarding collection of funds due to the estate; communicated extensively with seller of the Debtor's former marital residence in Hawaii and with Debtor's ex-spouse regarding her duty to pay to the estate the amount under the Divorce Decree she otherwise would pay to the Debtor, and answered questions from seller regarding effect of bankruptcy filing on seller's obligation to account for proceeds of sale and escrow; communicated with Trustee regarding issues surrounding administration of chapter 7 case. *Id.* at 3:19-26.

Asset Analysis and Recovery: Applicant spent 5.6 hours in this category. Applicant assisted the Trustee in determining whether the bankruptcy estate held a property interest in the former marital residence in Hawaii of the Debtor and his ex-spouse, or merely an unsecured right to collect an agreed amount when the ex-spouse purchased the residence after the Petition Date under terms of a pre-dissolution lease-buy-back agreement with a third party; communicated extensively with the seller the real property to notify seller of the Trustee's rights to collect from the Debtor's ex-spouse; communicated with the Debtor's counsel to obtain needed information regarding contact information for the Debtor's ex-spouse and regarding the facts surrounding the Debtor's and his ex-spouse's lease-buyback agreement for acquisition of possession and eventual title to the property residence located in Hawaii. *Id.* at 3:9-18..

Employment and Fee Applications: Applicant spent 2.6 hours in this category. Applicant prepared, filed, and served the application for approval of employment as general counsel; prepared, filed and served this Motion. *Id.* at 4:1-4.

Asset Disposition: Applicant spent 3.5 hours in this category. Applicant reached terms on behalf of the Trustee for sale of the estate's rights to collect an additional \$25,000.00 amount from the Debtor's ex-spouse under terms of Divorce Decree; drafted agreement for sale and motion to approve sale of estate's rights to collect such \$25,000 amount and supporting documents. This agreement, however, was not signed by the Debtor, and therefore the motion was not filed with the court. *Id.* at 4:5-10.

Claims Issues: Applicant spent 0.2 hours in this category. Applicant reviewed claims as filed with the court and specifically the filing of claims by Sherwin-Williams and withdrawal of certain such claims. *Id.* at 4:11-13.

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
Reynolds Law, LLP	19.1	\$400.00	<u>\$7,640.00</u>
Total Fees for Period of Application			\$7,640.00 (only requesting \$7,560 in this Motion)

Costs & Expenses

Applicant seeks no reimbursement for costs.

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 \$7,560 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	\$7,560
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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 Reynolds Law, LLP (“Applicant”), Attorney for Geoffrey M. Richards, [he 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 Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:

Reynolds Law, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$7,560,

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

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.