

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 1, 2016, at 10:30 a.m.

1.	<u>14-29231</u> -E-11	MIZU JAPANESE SEAFOOD	MOTION FOR COMPENSATION FOR
	RLC-22	BUFFET, INC.	KIT L. SUN, ACCOUNTANT
		Stephen M. Reynolds	7-26-16 [<u>203</u>]

Final Ruling: No appearance at the September 1, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

Kit L. Sun, Accountant ("Applicant") for Mizu Japanese Seafood Buffet, Inc., the Plan Administrator ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 15, 2014 through February 15, 2015. The order of the court approving employment, retroactively to the date of filing, of Applicant was entered on July 27, 2016, Dckt. 210. Applicant requests fees in the amount of \$4,800.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a

[professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including determining values for assets listed on Schedule B, gathering financial information for the Monthly Operating Reports, computed tax liabilities for the Internal Revenue Service, Franchise Tax Board, Board of Equalization, and Employment Development Department.. The court finds the services were beneficial to the Client and bankruptcy estate and 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 24 hours in this category. Applicant assisted Client with determining an accurate amount for amending Schedule B; assisted Plan Administrator by gathering financial information necessary for filing Monthly Operating Reports; computed tax liabilities; calculated and explained shareholder wages and dividend draw.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Kit L. Sun, CPA	24	\$200.00	\$4,800.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$4,800.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$4,800.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 under the confirmed Plan.

As the court has previously discussed in connection with the Motion to Employ Applicant, the court has been concerned with the instant employment, namely because of the request being retroactive to the time of filing, which at this point was nearly two years ago. Dckt. 207. The court reiterates this concern as the Plan Administrator and Counsel move forward to emphasize the importance of timely complying with all necessary Code provisions.

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

Fees	\$4,800.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Kit L. Sun (“Applicant”), Accountant for Plan Administrator been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kit L. Sun is allowed the following fees and expenses as a professional of the Estate:

Kit L. Sun, Professional Employed by Debtor in Possession

Fees in the amount of \$ 4,800.00,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Plan Administrator under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

