

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 23, 2021 at 10:30 a.m.**

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<b>1.</b>	<b><u>21-22270-E-7</u></b>	<b>DACKERY HARDEMAN</b> <b>Pro Se</b>	<b>ORDER TO SHOW CAUSE - FAILURE</b> <b>TO PAY FEES</b> <b>8-30-21 <u>[23]</u></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on September 1, 2021. The court computes that 22 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: \$27.50 due on August 16, 2021.

<b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b>
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The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no

sanctions ordered, and the bankruptcy case shall proceed in this court.

2. [19-24134-E-7](#) **FELIX/DEBORAH KIARSIS** **MOTION TO APPROVE LOAN**  
[DBL-1](#) **Bruce Dwiggins** **MODIFICATION**  
**9-7-21 [70]**

**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).**

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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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 7, 2021. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification 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, -----.

<b>The Motion to Approve Loan Modification is granted.</b>
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The Motion to Approve Loan Modification filed by Felix Kiarsis and Deborah F. Kiarsis ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$2,545.00 per month to \$2,444.52 per month, with an interest rate of 3.25%. The principal amount owed on the loan will change from \$395,202.71 to \$415,032.24.

The Motion is supported by the Declaration of Felix Kiarsis and Deborah F. Kiarsis. Dekt. 72. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

There being no objection from the Chapter 7 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan

Modification is granted.

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 Approve Loan Modification filed by Felix Kiarsis and Deborah F. Kiarsis (“Debtors”) 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 court authorizes Felix Kiarsis and Deborah F. Kiarsis to amend the terms of the loan with Wells Fargo Bank, N.A. (“Creditor”), which is secured by the real property commonly known as 20260 Morgan Hill Court, Anderson, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 73).

**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.

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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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2021. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

**The Motion to Dismiss is ~~XXXXX~~.**

The Chapter 7 Trustee, J. Michael Hopper ("Trustee"), seeks dismissal of the case on the grounds that Georgia A. Miles ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 04:00 p.m. on September 29, 2021. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

#### **DEBTOR'S RESPONSES**

Debtor filed a Response on September 3, 2021 stating that she was unable to appear at the Meeting of Creditors because

the signal was bad due to the fires the  
line said all circuits were busy. Plus  
I still don't have my SSI card and  
I have tried everything to get it.

Dckt. 105.

Debtor then filed a second Response on September 7, 2021 further stating

Due to fires + signal all circuits are busy  
there are fires all over north and it is  
effecting many locations even in the valley  
for faxes emails + texts and calls. It also  
needs to be postponed due to the fact of no  
SSI card at this time.

Dckt. 108.

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing xxxxxxxxxx

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, J. Michael Hopper ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is xxxxxx.

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).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice **NOT** Provided. The Proof of Service states that the Motion and supporting pleadings were served Office of the United States Trustee on August 19, 2021. ~~By the court's calculation, 35 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).~~

As to other parties in this action, the Proof of Service refers the court to an "attached address list." Dckt. 257, at 2. However, no address list was attached. Thus, the court is unable to determine which other parties, besides the Office of the United States Trustee, received service because no mailing matrix was actually attached to the filed Proof of Service. Dckt. 257.

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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, -----.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Bachecki, Crom & Co., LLP, the Accountant ("Applicant") for J. Michael Hooper, 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 September 11, 2019, through June 29, 2021. The order of the court approving employment of Applicant was entered on September 11, 2019. Dckt. 127. Applicant requests fees in the amount of \$8,378.00 and costs in the amount of \$171.80.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is

mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include reviewing prior tax returns, communications with Trustee, and preparation of various Federal and California tax returns. 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.

Tax Return Preparation: Applicant spent 22.50 hours in this category. Applicant communicated with Trustee and prepared federal and state tax returns for the Estate as well as reviewed past tax filings and reviewed issues on reportable corporate income.

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:

Professional	Rate	Hours Billed	Total
Jay D. Crom	\$545	1.5	\$817.50
	\$535	.7	\$374.50
	\$525	1.6	\$840.00
Virginia Huan-Lau	\$390	2.0	\$780.00
	\$370	.7	\$259.00
Paula Law	\$390	4.20	\$1,638.00
	\$380	.4	\$152.00
	\$370	.5	\$185.00
Jason Tang	\$320	1.7	\$544.00
	\$310	2.8	\$868.00
	\$300	6.4	\$1,920.00
TOTAL		22.50	\$8,378.00



### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$171.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.20	\$42.40
Postage		\$48.60
Pacer		\$20.80
FTB ITR Request		\$60.00
<b>Total Costs Requested in Application</b>		<b>\$171.80</b>

### **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. First and Final Fees in the amount of \$8,378.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

#### **Costs & Expenses**

First and Final Costs in the amount of \$171.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

<del>Fees</del>	<del>\$8,378.00</del>
<del>Costs and Expenses</del>	<del>\$171.80</del>

~~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 Bachecki,

Crom, and Co., LLP (“Applicant”), Accountant for J. Michael Hopper, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

~~Fees in the amount of \$8,378.0~~

~~Expenses in the amount of \$171.80,~~

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

~~IT IS FURTHER ORDERED~~ that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs 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.

**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).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2021. By the court's calculation, 35 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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, -----.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for J. Michael Hopper, 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 August 28, 2019, through June 29, 2021. The order of the court approving employment of Applicant was entered on September 3, 2019. Dckt. 116. Applicant requests fees in the amount of \$27,772.50 and costs in the amount of \$1,251.37.

## 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 providing general case administration; preparing fee and employment applications; preparing for litigation; and preparing and reviewing contested matters. The court finds the services were beneficial to Client and the Estate and were reasonable. The Trustee reports in his Declaration, Dckt. 245, that total funds of \$171,228 have been generated for the estate and priority unsecured claims totaling \$73,000 will receive a 100% dividend and general unsecured claims totaling \$40,000 with received a 51% dividend.

## **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 1.90 hours in this category.

Asset Marketing and Sales: Applicant spent 10.20 hours in this category.

Litigation and Contested Matters: Applicant spent 36.60 hours in this category.

Asset Analysis and Recovery: Applicant spent 11.00 hours in this category.

Asset Disposition: Applicant spent 22.00 hours in this category.

Fee/Employment Application: Applicant spent 11.00 hours in this category.

Tax and Tax Issues: Applicant spent 1.50 hours in this category.

Discovery: Applicant spent 7.50 hours in this category.

Pleadings and Settlement: Applicant spent 2.90 hours in this category.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russell Cunningham	36.70	\$425.00	\$15,597.50
Benjamin C. Tagert	39.50	\$100.00 \$150.00	\$4,370.00
Nicholas L. Kohlmeyer	26.90	\$275.00	\$7,397.50
Laurie Moede (Courier)	0.80	\$50.00	<u>\$407.50</u>
Jennifer Carver	4.90	\$75.00	
<b>Total Fees for Period of Application</b>			\$27,772.50

Exhibit A filed in support of the Motion are the detailed billing records for the services provided above. Dckt. 243.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,251.37 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Copying	\$0.10	\$288.30
Postage		\$216.55
Secretary of State Office		\$186.25
Depositions costs		\$193.20
Parking		\$30.00
Filing fee		\$333.75
Delivery/Mileage		\$3.32
<b>Total Costs Requested in Application</b>		\$1,251.37

## **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. First and Final Fees in the amount of \$27,772.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$1,251.37 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.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$27,772.50
Costs and Expenses	\$1,251.37

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham (“Applicant”), Attorney for J. Michael Hopper, the Chapter 7 Trustee (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Fees in the amount of \$27,772.50  
Expenses in the amount of \$1,251.37,

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 100% of the fees and 100% of the costs 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.



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2021. By the court's calculation, 35 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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J. Michael Hopper, the Chapter 7 Trustee, ("Applicant") for the Estate of Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period November 18, 2019, through July 30, 2021.

#### STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

### **Benefit to the Estate**

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According 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 employing necessary professionals; engaging in the sale of Debtor's residence; and addressing Debtor's Motion and other motions to the sale of the real property. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant employed necessary professionals; engaged in the sale of Debtor's residence; and addressed Debtor's Motion and other motions to the sale of the real property.

### **Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$47,500.00
3% of the balance of \$0.00	\$0.00
<b>Calculated Total Compensation</b>	<b>\$41,776.81</b>
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$41,776.81
Less Previously Paid	\$0.00
<b><u>Total First and Final Fees Requested</u></b>	<b>\$40,000.00</b>

## **FEES ALLOWED**

The court finds that the requested reduced fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$40,00.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$171,228.36 of unencumbered monies to be administered. The Chapter 7 Trustee employed necessary professionals; engaged in the sale of Debtor's residence; and addressed Debtor's Motion and other motions to the sale of the real property. Applicant's efforts have resulted in a realized gross of \$770,536.29 recovered for the estate. Dckt. 250.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted

under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	\$40,000.00
Costs and Expenses	\$0.00

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

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

The Motion for Allowance of Fees and Expenses filed by J. Michael Hopper, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that J. Michael Hopper is allowed the following fees and expenses as trustee of the Estate:

J. Michael Hopper, the Chapter 7 Trustee

Fees in the amount of \$40,000.00  
Expenses in the amount of \$0.00.

**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.

**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).**  
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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 2, 2021. 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 Professional 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, -----.

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

DESMOND, NOLAN, LIVAICH & CUNNINGHAM, the Attorney ("Applicant") for Alan S. Fukushima, 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 September 12, 2019, through August 30, 2021. The order of the court approving employment of Applicant was entered on September 17, 2019. Dckt. 26. Applicant requests fees in the amount of \$19,040.00 and costs in the amount of \$568.64.

## 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 of employment and fee applications; various motions; evaluating multiple proofs of claim; and resolving related disputes by withdrawal or amendment. The court finds the services were beneficial to Client and the Estate and were reasonable. In this case, the Chapter 7 Trustee currently has \$385,815.32 of unencumbered monies to be administered. The Chapter 7 Trustee’s efforts, assisted by Applicant, have resulted in a realized gross of \$433,905.54 recovered for the estate. Dckt. 130.

## **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.

[NEXT PAGE]

Category	Hours Billed	Total
Asset Marketing & Sales	2.30	977.50
Case Administration	5.20	2,090.00
Litigation & Contested Matters	1.10	467.50
Asset Analysis & Recovery	15.30	6,232.50
Asset Disposition	5.50	1,567.50
Relief from Stay/ Adequate Protection Hearings	0.70	297.50
Fee/Employment Applications	9.10	1,937.50
Claims Administration and Objections	6.10	2,592.50
Researching Law	2.00	150.00
Communicate (in firm)	0.50	37.50
Analysis and Advice	0.50	37.50
Settlement	5.30	2,252.50
Discovery	0.10	42.50
Pleadings	3.00	85.00
Tax	0.40	170.00
6.10TOTAL9.10	56.60	19,040.00

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham	36.90	\$425.00	\$15,682.50
Jennifer Carver	2.80	\$75.00	\$210.00
Former Law Clerk	7.70	\$75.00	\$577.50
Nicholas L. Kohlmeyer	8.80	\$275.00	\$2,420.00
Brian Manning	0.40	\$375.00	<u>\$150.00</u>
<b>Total Fees for Period of Application</b>			\$19,040.00

### Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of



\$568.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10	\$97.30
Postage		\$159.10
Advances		\$312.24
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$568.64</b>

## **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. First and Final Fees in the amount of \$19,040.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$568.64 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.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$19,040.00
Costs and Expenses	\$568.64

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by DESMOND,

NOLAN, LIVAICH & CUNNINGHAM (“Applicant”), Attorney for Alan S. Fukushima, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that DESMOND, NOLAN, LIVAICH & CUNNINGHAM is allowed the following fees and expenses as a professional of the Estate:

DESMOND, NOLAN, LIVAICH & CUNNINGHAM, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$19,040.00  
Expenses in the amount of \$568.64,

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 100% of the fees and 100% of the costs 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.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 2, 2021. 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 Professional 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, -----.

**The Motion for Allowance of Professional Fees is granted.**

Alan S. Fukushima, the Chapter 7 Trustee, ("Applicant") for the Estate of COACT Designworks ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 21, 2019, through August 31, 2021.

#### **STATUTORY BASIS FOR FEES**

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

### **Benefit to the Estate**

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According 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 services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

## FEES REQUESTED

**Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$19,195.27
3% of the balance of \$0.00	\$0.00
<b>Calculated Total Compensation</b>	\$24,945.27
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$24,945.27
Less Previously Paid	\$0.00
<b><u>Total First and Final Fees Requested</u></b>	\$24,945.27

## FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$24,945.27 are approved pursuant to 11 U.S.C. § 330 and are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$385,815.32 of unencumbered monies to be administered. The Chapter 7 Trustee provided services that are reasonable and expected of a trustee administering an involuntary Chapter 7 estate. Applicant's efforts have resulted in a realized gross of \$433,905.54 recovered for the estate. Dckt. 130.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	\$24,945.27
Costs and Expenses	\$7.80

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 Alan S. Fukushima, the Chapter 7 Trustee, (“Applicant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Alan S. Fukushima is allowed the following fees and expenses as trustee of the Estate:

Alan S. Fukushima, the Chapter 7 Trustee

Fees in the amount of \$24,945.27

Expenses in the amount of \$7.80.

**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.

**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).**  
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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice **NOT** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2021. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

Movant did not provide the number of days for notice required by the Federal Rules of Bankruptcy Procedure. At the hearing **xxxxxxx**

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

**The Motion for Approval of Stipulation Between Trustee and the California Employment Development Department is **xxxxx**.**

The Chapter 7 Trustee, Kimberly J. Husted ("Trustee") requests that the court approve a stipulation with CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT ("EDD") which provides that the penalty portions of EDD's Proof of Claim 6-1 ("POC 6-1"), totaling \$171,538.15, will be avoided and the remaining balance, totaling \$65,392.47, will be allowed and paid from the sale proceeds of the Settlement and Release Agreement ("SRA") approved by the court on August 12, 2021.

The Trustee has been advised that there is some ambiguity as to whether the penalty portions of the EDD lien, now attached to the Sale Proceeds, requires additional affirmative action to be avoided. The Trustee has determined that resolving the lien avoidance question now and paying the \$63,068.38 in priority and non-priority tax (and associated interest) from the Sale Proceeds as contemplated by the SRA is in the best interests of the estate.

As part of the Stipulation, Trustee also requests the authority to pay the priority and non-priority tax (and associated interest) of the EDD claim from the sale proceeds of the Settlement and Release Agreement approved by the court on August 12, 2021.

## **STIPULATION**

Trustee and EDD stipulate to an order regarding Proof of Claim 6-1, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 280):

- A. The penalty (and associated interest) portions of POC 6-1, the sum of \$171,539.15, shall be avoided pursuant to 11 U.S.C. Section 724(a).
- B. The priority and non-priority tax (and associated interest) due on POC 6-1, the sum of \$63,068.38, shall be paid by the Trustee from the Sale Proceeds.
- C. The \$65,392.47 remaining balance and \$171,539.17 avoided penalty portion of the Sale Proceeds are not subject to the lien asserted by the EDD.

## **DISCUSSION**

Here, Trustee and EDD stipulate regarding the EDD's lien on Debtor's real property that is subject to a Settlement and Release Agreement, resulting in \$300,000 in sales proceeds. Debtor's real property in Marysville, California—commonly known as 713 Saddleback Drive, 540 Saddleback Drive, and 7959 State Highway 70 (collectively "Trust Property")—is subject to a lien recorded in Yuba City by the EDD, and said lien also encumbers Debtor's interest in the sole proprietorship Fletcher's Landscape and personal property therein. EDD's lien is based on missing tax payments for the 2013-2015 tax period, and includes \$171,539.15 in penalties (with interest) and \$63,068.38 in Priority and Non-Priority Tax (with interest).

Trustee, citing 11 U.S.C. § 724 (a), argues that Trustee may avoid penalties for secured claims; thus, the EDD's penalties in their valid claim and lien may be avoided. Trustee and EDD thus have stipulated that the \$63,068.38 non-penalty balance, which is fully secured, will be paid from the sales proceeds.

The Motion to Approve the Stipulation was filed and was set for hearing. **A total of 14 days notice was provided with oppositions and responses to be heard at the hearing.** The Motion's Certificate of Service provides for all who received notice of this Stipulation.

The Stipulation is based on the calculations provided by Trustee and supported by the



documentation provided with the EDD's tax lien:

For the Penalty Based Portion to be avoided under 11 U.S.C. § 724 (a):

Item	Amount
Penalties	\$138,163.59
Interest	\$33,375.56
<b>Total</b>	<b>\$171,539.15</b>

For the Non-Penalty Based Portion to be Paid from the Sales Balance:

Item	Amount
Priority Tax	\$33,901.25
Non-Priority Tax	\$23,226.48
Interest	\$5,940.65
<b>Total</b>	<b>\$63,068.38</b>

Counsel, Creditor, and Trustee have responsibly addressed these issues and have presented a Stipulation that allows Debtor to move on.

The Motion is granted and the Trustee is authorized to pay \$63,068.38, the priority and non-priority tax (and associated interest) due on Proof of Claim 6-1 from the proceeds of the sale of the Fletcher Living Trust and certain real property in Marysville, California and Debtor's interest in a sole proprietorship business and certain personal property used in connection with the business.

~~The court shall issue a minute order substantially in the following form holding that:~~

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

~~The Motion to Approve Stipulation filed by Kimberly J. Husted, 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 Approval of Stipulation between Movant and CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dekt. 280).~~

~~IT IS FURTHER ORDERED~~ that the Chapter 7 Trustee is authorized to pay CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT \$63,068.38 as provided for according to the Stipulation.

10. [19-22653-E-7](#)      **REECE/RODINA VENTURA**      **OBJECTION TO CLAIM OF ADELA**  
[PGM-1](#)      **Peter Macaluso**      **BON GAUNIA, CLAIM NUMBER 2**  
8-2-21 [\[375\]](#)

**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.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Creditor's Attorney(s), Chapter 7 Trustee, Chapter 7 Trustee's Attorney and Office of the United States Trustee on August 2, 2021. By the court's calculation, 52 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Proof of Claim Number 2-2 of Adela Bon Gaunia is XXXXXXX.**

Reece Ventura and Rodina Cordero Ventura, the Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Adela Bon Gaunia ("Creditor"), Proof of Claim No. 2-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$175,196.52. Objector asserts that the subject of the claim, which are unpaid wages, penalties, and interest, are the subject of a pending trial, and the presumption of validity of the claim is therefore challenged as it is subject to ongoing legal dispute.

Debtor also objects to the added post-petition attorney fees where the Proof of Claim was amended without the court's approval, or relief from the automatic stay.

This Objection was filed when Creditor's adversary proceeding to have this obligation determined nondischargeable was pending. That adversary proceeding was voluntarily dismissed by Creditor on August 5, 2021, (19-2156; Order, Dckt. 41), which was only 20 days before the August 25,

2021, scheduled trial. Creditor requested on July 27, 2021, that her adversary proceeding be dismissed. 19-2156; Request for Dismissal, Dckt. 32. This was 14 days after the deadline for Creditor to lodge with the court and serve her direct testimony statements and exhibits, and the same day that Debtor was required to lodge with the court and serve their direct testimony statements and exhibits. *Id.*; Trial Setting Order, Dckt. 30.

In light of the eve of trial dismissal and it being requested after Debtor had to prepare for trial, the court ordered (and Creditor agreed) that Creditor pay Debtor's:

[a]ttorney's fees, costs, and expenses incurred during the period of **July 1, 2021 and August 4, 2021**, in preparing for the trial in this Adversary Proceeding which the Plaintiff requested be dismissed after the deadline for Plaintiff lodging with the court her Direct Testimony Statements and Exhibits had expired, with no such Direct Testimony Statements and Exhibits lodged with the court, plus the reasonable costs and attorney's fees for preparing and prosecuting the Motion for Allowance of such costs, fees, and expenses.

*Id.*, Dismissal Order, p. 2:10-15, Dckt. 41 (emphasis added).

The court has also ordered that if Creditor fails to pay the fees awarded within 21 days of such order, then the dismissal is with prejudice to each and every right to payment of a debt by Creditor, which includes such rights asserted in the proof of claim.

Debtor filed a Motion for Fees and Expenses as provided in the Order of Dismissal. *Id.*, Dckt. 44. That Motion requests fees in the amount of \$5,425.00. Creditor has filed an Opposition asserting that many of the fees do not relate to Creditor's adversary proceeding, but a separate adversary proceeding being prosecuted by Creditor's husband. *Id.*; Dckt. 49. Though the court has expressly ordered that all fees in preparation for trial during the period July 1, 2021 and August 4, 2021, Creditor argues in the opposition:

Defendant [Creditor] asserts that fees incurred prior to July 13, 2021 are not recoverable.

*Id.*, Opposition, p. 3:26. <sup>FN.1.</sup> Creditor asserts no basis why this court's prior final order allowing for all "[a]ttorney's fees, costs, and expenses incurred during the period of July 1, 2021 and August 4, 2021, in preparing for the trial in this Adversary Proceeding" is not binding on Creditor, why such contention is not being presented for an improper purpose, that such assertion is warranted on existing law or a nonfrivolous argument for extension, change, or modification of existing law. (Certification made by Creditor and Creditor's counsel pursuant to Federal Rule of Bankruptcy Procedure 9011.) Creditor and Creditor's counsel do not explain why the final order setting that period for fees is not binding on her.

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FN. 1. The court notes that in Creditor's husband's adversary proceeding, Creditor's husband and his counsel (which are the same as Creditor's counsel) have been challenged in following the Local Bankruptcy Rules, Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence. This has occurred notwithstanding that Creditor has an 30+ year experienced, well respected, bankruptcy attorney as co-counsel on this case and for her adversary proceeding.

As part of the Opposition, Creditor's state court counsel and Creditor's 30 year bankruptcy experienced counsel have improperly included exhibits as an attachment to the Opposition, which is clearly in violation of this Court's long standing provisions in Local Bankruptcy Rule 9004-1(c)(1), (d)(1), and 9014-1.

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## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the *prima facie* validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

### Debtor's Objection

Debtor proposes that, while a creditor's proof of claim is assumed *prima facie* valid, the burden of evidence shifts back to the Creditor when the Debtor offers evidence of equally probative value to overcome the presumption of *prima facie* validity. Debtor points the court to the proofs of claim filed by Creditor as evidence. Then argues that by Debtor disputing the claim in its entirety and such claim being the subject of the pending trial, the Debtor has provided sufficient evidence to shift the burden to Creditor to prove the validity of the claim.

As evidence, Debtor provides the court with two exhibits: Exhibit A, Creditor's Proof of Claim 2-1 and Exhibit B, Creditor's Amended Proof of Claim 2-2. In Exhibit A, the Proof of Claim states that the claim is based on "unpaid wages, penalties, interest and attorneys [sic] fees." Proof of Claim 2-1, at 2. Proof of Claim 2-1 includes an attachment titled "DAMAGE CALCULATIONS [sic]: DEMAND FOR PAYMENT FOR SETTLEMENT ONLY" which details the alleged total unpaid wages due to Creditor and related penalties. *Id.*, at 6-8.

Exhibit B, the Amended Proof of Claim 2-2, has been amended to, first, edit Question 8, which now states "Unpaid wages, penalties, interest (Attorney fees TBD by state court motion)." *Id.*, at 11. It has been further amended to replace the original attachment and now includes a document titled: DAMAGE CALCULATIONS: DEMAND FOR PAYMENT, which was updated, March 16, 2021, and provides a breakdown of the hours and days worked and the wages earned by Creditor for years 2014 and 2015. *Id.*, at 13-16. The document also provides a breakdown of penalties and liquidated damages. *Id.*, at 16-17. On page 17, there is a heading for attorney's fees which states "(TBD by state court motion)." *Id.*, at 17. The last page includes a table with the "Interest: Non-compounded on Unpaid

Wages Until 3/31/2021.” *Id.*, at 18.

The court finds that outside of pointing out the unsupported attorney’s fees and the existence of legal controversy, the Debtor does not provide analysis as to why this meets the burden of evidence to object to the *entire* claim of the Creditor; instead the Debtor provides that the Creditor’s refusal to appear during the trial and lack of evidence in their original claim suffices.

This is peculiar considering the original premise of Debtor’s argument is that Creditor’s claim is assumed *prima facie* valid, and Debtor does not explain why a failure to appear before their pending trial is grounds for denying Creditor’s claim in full, where Debtor provides a full breakdown of the wages and penalties related to their claim.

### **Creditor’s Response**

Creditor opposes on several grounds, including that California wage and hour law applies which favor workers to be treated fairly and paid and further that the Debtor grossly mistreated the Creditor during her tenure as a child care provider. Dckt. 379 at 2. Additionally, Creditor opposes the objection because Creditor had both legal and mathematical support for their damages as stated in the Proof of Claim, and lastly, Debtor may not have standing to object to the claim of the claims exceed the amounts of funds available when taking into account that the profits from the sale of Cebu properties is uncertain. *Id.*

In support to their Opposition, Creditor provides the Declarations of: Michael Harrington (Creditor’s state court action counsel), Creditor Adela Bon Gaunia, and Dr. Lianju Sun. Dckts. 380, 381, and 382. Mr. Harrington’s declaration includes “the *Reyes* decision from the Labor Commissioner,” while the facts may be similar, Mr. Harrington, simply attaches a copy and claims they are similar without providing any analysis as to why they are similar and how such similarity has ANY relation to the bankruptcy proceedings at hand. While the case does lend credence to the calculations discussed below, its inclusion without additional explanation is puzzling.

For the mathematical support to Creditor’s claim, Dr. Lianju Sun, a PhD in applied mathematics with experience as a financial management, provides a declaration explaining the calculation process for Creditor’s Proof of Claim. Dckt. 382. Dr. Sun provides reasoning for each category of wages, including wages earned for regular hours, overtime Hours, double overtime hours, and interest for unpaid wages, alongside citations to the relevant labor code provisions to support her calculations. This also included calculations for violations for missed breaks, missed meals, waiting time penalty, and penalty to produce records.

Creditor also fails to provide justification for the attorney’s fees requested as part of Proof of Claim 2-2, which Debtor specifically objects to. Creditor does not file any additional declaration or task billing summary with hourly breakdowns of the requested legal fees. The court understands that as there is ongoing litigation, it may be that the legal fees are pending. However, Creditor’s counsel could provide an estimate of the hours spent and the related fees.

### **September 23, 2021 Hearing**

It appears that two points of convergence have occurred. First, Creditor’s claim may be disallowed in its entirety if Creditor fails to pay the fees and expenses ordered by the court within the 21

days as provided in the now final order of dismissal of Creditor's adversary proceeding. 19-2156; Order of Dismissal, Dckt. 41.

The court also notes that the Objection to Claim was filed on August 2, 2021, which was before this court granted the Motion to Dismiss Creditor's Adversary Proceeding, which Motion Debtor vigorously opposed stating that through that the disputes with Creditor's claim would be resolved.

Amended Proof of Claim 2-2 states that the claim is for \$190,348.77, which is for unpaid wages, penalties, interest. Additionally, it is stated that "Attorney fees TBD by state court motion." Amd. POC 2-2, §§ 7, 8. It does not appear that there is a state court judgment for which post-judgment attorney's fees would be awarded. The court denied Creditor's motion for relief from the stay to proceed with her state court litigation. Order, Dckt. 61.

At the hearing, **XXXXXXX**

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 Objection to Claim of Adela Bon Gaunia ("Creditor"), filed in this case by Reece Ventura and Rodina Cordero Ventura, the Chapter 7 Debtor, ("Objector") 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 Objection to Proof of Claim Number 2-2 of Creditor is **XXXXX**.

# FINAL RULINGS

11. [15-29541-E-12](#) **TIMOTHY WILSON** **MOTION TO DISMISS CASE**  
[MHM-3](#) **Mark Wolff** **8-6-21 [219]**

**Final Ruling:** No appearance at the September 23, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, and Office of the United States Trustee on August 6, 2021. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss 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 respondent 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 to Dismiss is granted, and the case is dismissed.**

The Chapter 12 Trustee, Michael Meyer (“Trustee”), seeks dismissal of the case on the basis that the debtor, Timothy C. Wilson (“Debtor”), is delinquent in plan payments.

## DISCUSSION

The Bankruptcy Code provides:

[O]n request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

[. . .]

(6)material default by the debtor with respect to a term of a

confirmed plan[.]

11 U.S.C. § 1208(c)(6). Trustee testifies that Debtor is \$50,000.00 delinquent in plan payments, which represents one and a half months of the \$10,000.00 plan payment and multiple months of the \$20,000.00 plan payment. Failure to make such plan payments is a material default by the Debtor with respect to the terms of a confirmed plan. 11 U.S.C. § 1208(c)(6).

Thus, Trustee argues that such failure to make plan payments is cause for dismissal of this Chapter 12 case.

Debtor, who is represented by counsel, has not opposed Trustee's motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 12 case filed by the Chapter 12 Trustee, Michael Meyer ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.



**Final Ruling:** No appearance at the September 23, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 56 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.**

Barry H. Spitzer, the Attorney ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 5, 2021, through July 29, 2021. The order of the court approving employment of Applicant was entered on April 6, 2021. Dckt. 22. Applicant requests fees in the amount of \$4,503.00 and costs in the amount of \$128.60.

## **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 reviewing court files, communicating with the Debtor's attorney and Trustee to resolve matters without the need to sell the Debtor's residence to a third party, prepared the purchase agreement and motion to sell, and appeared at related court hearings. The Estate has \$31,953.34 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Case Administration: Applicant spent 11.40 hours in this category. Applicant reviewed the bankruptcy petition, schedules, and order denying conversion to Chapter 13, communicated between Trustee and Debtor's attorney, prepared purchase agreement, prepared motion to sell, prepared employment and fee application, and attended several related hearings.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Barry H. Spitzer	11.40	\$395.00	\$4,503.00
<b>Total Fees for Period of Application</b>			\$4,503.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$128.65 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$45.65
Copying	\$0.15	\$60.45
Court Call		\$22.50
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$128.60</b>

## **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. First and Final Fees in the amount of \$4,503.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

### **Costs & Expenses**

First and Final Costs in the amount of \$128.60 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.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$4,503.00
Costs and Expenses	\$128.60

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 Barry H. Spitzer (“Applicant”), Attorney for Kimberly J. Husted, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

Barry H. Spitzer, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$4,503.00

Expenses in the amount of \$128.60,

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 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.