

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

September 24, 2015 at 10:30 a.m.

1.	<u>12-34203</u> -E-7	WATSON VENTURES, LLC	MOTION TO SELL AND/OR MOTION TO
	HCS-4	Pro Se	PAY
			8-27-15 [<u>119</u>]

Tentative Ruling: The Motion to Sell Property 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).

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.

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

Correct 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 27, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property 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). The defaults of the non-responding parties are entered.

The Motion to Sell Property is granted.
--

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

September 24, 2015 at 10:30 a.m.

- A. La Noria - Lot #109, Mexico
- B. La Noria - Lot #110, Mexico

The proposed purchaser of the Property is Mario Xavier Cabezas Pacheco ("Buyer"). The Trustee states that this is the only offer that Dream Homes of Cabo, the Trustee's listing agent, has received. The Buyer agreed to purchase Lot # 109 for \$70,000.00 and Lot #110 for \$50,000.00.

As part of the offer, the Buyer agreed to make a non-refundable \$10,000.00 earnest money deposit on each Lot after the close of a 15-day due diligence period. The sale is "as-is" and subject to court approval. The sale agreement also requires the Buyer to pay all costs related to the transfer or cancellation of the current trusts in which the Property is held, a requirement under Mexican law. An addendum to the agreement also requires the Buyer to advance certain costs identified below, as needed, in order to allow the closing of escrow to proceed more quickly, which shall be credited towards the purchase price.

Below is a terms of the proposed sale and distribution of purchase price:

- 1. Lot # 109
 - a. Purchase Price is \$70,000.00
 - b. Costs of Sale

<u>PURCHASE PRICE</u>	<u>\$70,000.00</u>
Dream Homes of Cabo Commission (10% of purchase price plus 16% Mexico Value Added Tax)	<\$8,120.00>
Closing Agent in Mexico to sign documents on behalf of Trustee	<\$1,160.00>
Official translation of documents	<\$300.00>
<u>NET PROCEEDS BEFORE OTHER PAYMENTS</u>	<u>\$60,420.00</u>
Property taxes for 2015 (Trustee states that he personally advanced this money due to the requirements that property taxes are current prior to an "appraisal" being allowed by the Mexican government. The Trustee is seeking reimbursement of this cost)	<\$378.34>
Interacciones Bank Trust Fees 2009-2015	<\$4,298.73>

Homeowners Association of Puerto Los Cabos Association Fees and Late Fees for 2013, 2014, and 2015 (first 3 quarters)	<\$13,709.00>
Homeowners Association of Puerto Los Cabos Developer Building Extension Fees for 2010 and 2011	<\$10,000.00>
<u>REMAINING BALANCE FOR ESTATE</u>	<u>\$32,033.93</u>

2. Lot #110

a. Purchase Price is \$50,000.00

b. Costs of Sale

<u>PURCHASE PRICE</u>	<u>\$50,000.00</u>
Dream Homes of Cabo Commission (10% of purchase price plus 16% Mexico Value Added Tax)	<\$5,800.00>
Closing Agent in Mexico to sign documents on behalf of Trustee	<\$1,160.00>
Official translation of documents	<\$300.00>
<u>NET PROCEEDS BEFORE OTHER PAYMENTS</u>	<u>\$42,740.00</u>
Property taxes for 2015 (Trustee states that he personally advanced this money due to the requirements that property taxes are current prior to an "appraisal" being allowed by the Mexican government. The Trustee is seeking reimbursement of this cost)	<\$223.12>
Interacciones Bank Trust Fees 2009-2015	<\$4,298.73>
Homeowners Association of Puerto Los Cabos Association Fees and Late Fees for 2013, 2014, and 2015 (first 3 quarters)	<\$8,872.83.00>
Homeowners Association of Puerto Los Cabos Developer Building Extension Fees for 2010 and 2011	<\$10,000.00>
<u>REMAINING BALANCE FOR ESTATE</u>	<u>\$19,345.32</u>

September 24, 2015 at 10:30 a.m.

- Page 3 of 18 -

The Trustee state that he is unaware of any secured liens on the Property nor did the Debtor schedule any liens.

The Trustee states that in order to avoid the added expense of traveling to Mexico to sign documents and to conduct the transaction, the Trustee has been advised to use the services of a closing agent in Mexico to prepare and sign all necessary documents. The Trustee has been advised by the realtor there are certain documents the Trustee must sign, which include a power of attorney, instruction, application for transfer of the Property and trust, and other similar documents normally required by the Mexico Notary Public or the Mexican Trustee Bank for the execution of the transfer of the Property or assignment of rights to the Trust in which the Property is held.

The Trustee requests the authority to sign such documents, including a document that grants a limited power of attorney to the person Mr. Geisler recommended, Maria De Lourdes De La Torre Aispuro and her staff Tania Gare Torres Villalobos, Luis Manual Espinoza Colli and Bernardo Tumalan Cisneros, as closing agent for the purpose of signing documents and engaging in the transactions necessary to close the sale and to pay the attorney in fact her fee to close such transactions on the Trustee's behalf in Mexico, with the exception of any procedure before the courts in Mexico that may be requested by the Mexican Notary Public or Mexican Trustee Bank for the homologation of the US Bankruptcy process in Mexico.

The Trustee also requests final approval of, and authorization to pay to, Dream Homes of Cabo the agreed real estate commission of 10% of the gross sales price of the Property from the sale proceeds at the close of escrow plus the 16% Mexico Value Added Tax (calculated on the commission).

Lastly, the Trustee requests that the 14-day stay pursuant to Fed. R. Bankr. P. 6004(h) be waived to allow the sale to proceed quickly given the unique facts of the sale.

DISCUSSION

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. While the court recognizes that the proposed sale prices of the two lots are below the estimated value of the land on Debtor's schedule, the fact that this is the only offer received by the Trustee supports the premise that this is the fair market price of the lots in Mexico. Additionally, the fact that leaving these plots in the estate results in penalty fees that further diminish the value of the Property and the potential benefit to the estate by not quickly selling the Property. The terms provide for the reimbursements of costs made by the Trustee and the Buyer and results in a net benefit to the estate of \$51,379.25.

As to the Trustee's request for authorization to sign documents necessary to allow professionals in Mexico sign documents to finalize the sale of the Property on behalf of the Trustee is proper given the international nature of the sale and the cost-saving effect such authorization would result

in. The Trustee is thereby authorized to sign all documents and take all actions reasonably necessary to close the sale, including signing and granting a limited power of attorney for the purpose of signing documents and conducting transactions necessary to close the sale, such as documents necessary to transfer the Property to the Buyer, and to pay the attorney in fact to conduct such transactions from the sale proceeds.

Lastly, given the nuances of Mexican law and the need to quickly execute the sale, the court finds cause to waive the 14-day stay of Fed. R. Bankr. P. 6004(h)

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 Sell Property filed by Alan Fukushima, Chapter 7 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 Alan Fukushima, Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mario Xavier Cabezas Pacheco or nominee ("Buyer"), the Property commonly known as

1. La Noria - Lot # 109, Mexico
2. La Noria - Lot #110, Mexico

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$70,000.00 for La Noria - Lot #109 and \$50,000.00 for La Noria - Lot %110, on the terms and conditions set forth in the Purchase Agreement, Exhibit A and B, Dckt. 122, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale, including signing and granting a limited power of attorney for the purpose of signing documents and conducting transactions necessary to close the sale, such as documents necessary to transfer the Property to the Buyer, and to pay the attorney in fact to conduct such transactions from the sale proceeds.

4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to ten percent (10%) of the actual purchase price upon consummation of the sale and the 16% Mexican Value Added Tax calculated on the commission. The ten percent (10%) of the actual purchase price upon consummation of the sale and the 16% Mexican Value Added Tax calculated on the commission shall be paid to the Trustee's realtor, Dream Homes of Cabo.
5. The 14-day stay pursuant to Fed. R. Bankr. P. 6004(h) is waived for cause

2. [13-24254](#)-E-7 RUSS TRANSMISSION INC MOTION FOR ADMINISTRATIVE
SMD-4 Gary F. Zilaff EXPENSES
8-10-15 [[189](#)]

Final Ruling: No appearance at the September 24, 2015 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 Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Income Tax Claims 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 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 Administrative Income Tax Claims is granted.

Susan Didriksen, the Chapter 7 Trustee, filed the instant Motion for Allowance of Administrative Income Tax Claims on August 10, 2015. Dckt. 189. The Trustee requests, pursuant to 11 U.S.C. § 503(b)(1)(B), for allowance of

September 24, 2015 at 10:30 a.m.

- Page 6 of 18 -

administrative expense claims resulting from taxes incurred by the estate that became due and owing post-petition in the amount of \$238,920.10 to the Internal Revenue Service and \$54,043.09 to the Franchise Tax Board and authority, subject to 11 U.S.C. § 726, to pay the balance due, if any, on account of said claims from available funds.

The Trustee states that she employed a certified public accountant to prepare estate income tax returns. The Trustee filed the returns and requested determinations pursuant to 11 U.S.C. § 505(b)(2). The Trustee states that none of the returns have been selected for examination.

As stated in the returns, the Trustee asserts that the estate's liability to the Internal Revenue Service and Franchise Tax Board, which to date have not a request for allowance of an administrative expense, is:

Tax Year End	Internal Revenue Service	Franchise Tax Board
2014	\$238,920.10	\$54,043.09

DISCUSSION

11 U.S.C. § 503 of the Bankruptcy Code provides for the "allowance" of administrative expenses. Specifically, 11 U.S.C. § 503(b)(1)(B) provides for the allowance of administrative expense of "any tax. . . incurred by the estate. . . ." 11 U.S.C. § 503(b)(1)(D) does not require a governmental unit to file a request for payment of an administrative expense as a condition of payment.

Here, the Trustee, in her fiduciary capacity, prepared and filed Debtor's tax returns for 2014. Accordingly, the tax liability and administrative expense owed by the Debtor to the Internal Revenue Service is \$238,920.10 and to Franchise Tax Board is \$54,043.09. The Trustee has shown, pursuant to 11 U.S.C. § 503(b)(1)(B) that this is an administrative expense that the Trustee can request authorization from the court to pay.

The court finds that this is an allowed administrative expense pursuant to 11 U.S.C. § 503. Therefore, the Motion is granted and the Trustee is authorized to pay the Internal Revenue Service \$238,920.10 and the Franchise Tax Board \$54,043.09 for their administrative claims.

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 for Allowance of Administrative Income Tax Claims filed by Susan Didriksen, Chapter 7 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 is granted and the Trustee is authorized to pay the Internal Revenue Service \$238,920.10 and the Franchise Tax Board \$54,043.09 for their

administrative claims from available estate funds.

3. [11-36557](#)-E-7 MARTHA RAMIREZ MOTION FOR COMPENSATION FOR
ASF-2 C. Anthony Hughes MICHAEL GABRIELSON,
 ACCOUNTANT(S)
 8-4-15 [[288](#)]

Final Ruling: No appearance at the September 24, 2015 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2015. By the court's calculation, 51 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.

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

Gabrielson & Company, the Accountant ("Applicant") for Alan Fukushima the Chapter 7 Trustee ("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 March 29, 2013 through July 26, 2015. The order of the court approving employment of Applicant was entered on April 2, 2013. Dckt. 165. Applicant requests fees in the amount of \$5,985.00 and costs in the amount of \$126.43.

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

September 24, 2015 at 10:30 a.m.

- Page 8 of 18 -

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).

Benefit to the Estate

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 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 preparing and filing both Federal and California Estate Income Tax Returns, evaluating the tax basis and impact of selling multiple real property assets, and other various administrative tasks. 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 1.4 hours in this category. Applicant prepared employment documents for trustee's review and prepared the instant motion.

Preparing Federal and California Estate Income Tax Returns: Applicant spent 16.4 hours in this category. Applicant performed the following tasks: reviewed and prepared various rental and property tax returns for 2013, 2014, and the start of 2015; reviewed the relevant documents with trustee; filed extensions for federal estate income tax returns; discussed potential real property sales with trustee; and prepared forms to exempt the sale of real property from FTB withholding. Dckt. 292.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael Gabrielson (2013)	7.8	\$325.00	\$2,535.00
Michael Gabrielson (2014)	3.2	\$345.00	\$1,104.00
Michael Gabrielson (2015)	6.8	\$345.00	\$2,346.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$5,985.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$126.43 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	\$0.20 per page	\$78.60
Postage at Cost		\$47.83
Total Costs Requested in Application		\$126.43

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 \$5,985.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include copying costs at 20 cents per page. The Eastern District of California only approves copying charges up to 10 cents per page. The court disallows \$39.30 of the requested costs.

The First and Final Costs in the amount of \$87.13 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$5,985.00
Costs and Expenses	\$87.13

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 Gabrielson & Company ("Applicant"), Accountant for the 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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional Employed by Trustee

Fees in the amount of \$5,985.00
Expenses in the amount of \$87.13,

IT IS ORDERED that the costs of \$39.30 are not allowed by the court.

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 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.

4. [11-36557](#)-E-7 MARTHA RAMIREZ
HCS-6 C. Anthony Hughes

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF
HERUM\CRABTREE\SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
8-26-15 [[294](#)]

Final Ruling: No appearance at the September 24, 2015 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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2015. By the court's calculation, 29 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.
--

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Alan Fukushima, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

On July 26, 2012, this court authorized Trustee to employ The Suntag Law Firm as an attorney for Trustee. Dckt. 119. On February 1, 2014, The Suntag Firm merged with Herum\Crabtree and moved to have Applicant replace The Suntag Law Firm as attorney. Dckt. 229, 231 ¶ 2. This court approved the employment of Applicant on May 24, 2014, Dckt. 237.

The period for which the fees are requested is for the period April 11, 2012, through September 24, 2015, for work provided by both The Suntag Law Firm premerger and Applicant. Applicant requests reduced fees and costs in the amount of \$35,000.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

September 24, 2015 at 10:30 a.m.

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 an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney 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). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "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 include case administration, communications with Trustee regarding real property, preparing settlement agreement, responses to objections to claim, drafting Motion to Abandon, and on the sale of Debtor's property. The estate has \$64,598.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 296 ¶ 3. 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 33.4 hours in this category. Applicant assisted Client with prepared and filed nine stipulations to extend deadlines, reviewed and advised the Trustee on exemptions, and prepared the instant application for compensation.

Review and Advice to Trustee on Legal Issues regarding Multiple parcels of Real Property: Applicant spent 25.5 hours in this category. Applicant assisted Client by assessing the nature of the estate's 18 parcels of real property, evaluated the impact of various liens and the joint ownership on some real property with a non-filing spouse. Applicant asserts this task was complicated by Debtor's non-compliance. Applicant also reviewed title reports, rental agreements of the non-filing spouse. Ultimately, Applicant advised Client of the feasibility of selling the Estate's real property. Dckt. 297.

Attempts at Global Settlement of Claims and Administrative Expenses: Applicant spent 8.2 hours in this category. Applicant asserts that Debtor made several requests to pursue settling the bankruptcy case, and Applicant prepared documents and information multiple times in preparation. However, Applicant asserts Debtor did not follow-up with Applicant, and no agreement was reached. Dckt. 297.

Sale of Real Property on Garden highway in Yuba City Applicant spent 86.1 hours in this category. Applicant assessed the sale of two parcels of

real property, located at 11278 Garden Highway, Yuba City CA. Complications that arose include: coordinating between the realtor for the sale of the property; getting consent for the sale from the non-filing spouse; addressing the arrest of three men for marijuana possession and cultivation on the property; preparing a motion to abandon in response to a secured claimant's motion for relief from stay, then negotiating with the secured claimant to reduce the claim; coordinating with the Debtor and a buyer for the property, and coordinating with the title company to transfer title, pay-off demands, and close escrow; preparing motions to sell the property and compensate the realtor; and filing a withdrawal for the motion to abandon.

Application to Employ Realtor to Sell Additional Properties: Applicant spent 5.5 hours in this category. Applicant assisted Client by preparing a motion to employ a realtor to sell three properties (an Office Building at 906 Almond Street, Yuba City CA; a single family residence at 5725 Riverside Drive, West Linda CA; and a parcel of land at 253 South Elmwood, Lindsay CA) and to investigate selling a fourth.

Objection to Claim of Celerino Benitez: Applicant spent 10.1 hours in this category. Applicant responded to a proof of claim filed by Celerino Benitez for a total of \$38,960.00, relating to a personal loan and wages. However, Trustee decided to not oppose Benitez's claim, and allowed Debtor to proceed with the objection.

Relief from Stay Motion as to North Oak Avenue Property and Motion to Abandon: Applicant spent 2.8 hours in this category. Applicant assisted Client to determine the real property at 946 North Oak Avenue, Lindsay CA may impose a tax burden on the Estate because of a secured claim by U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc, as its attorney in fact. Applicant filed a Motion to Abandon at Client's request.

Relief from Stay Motion as to Jaime Drive Property and Motion to Abandon: Applicant spent 2.5 hours in this category. Applicant assisted Client to determine the real property at 1766 Jamie Drive, Yuba City, CA would not have equity for the estate because of a secured claim by HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Back Securities 2005-3 Trust, Home Equity Asset-Backed Certificates, Series 2005-3. Applicant filed a Motion to Abandon at Client's request.

Sale of Riverside Drive Property: Applicant spent 15.3 hours in this category. Applicant reviewed the papers related to the sale of real property at 5725 Riverside Drive, West Linda CA. Applicant then filed a Motion to sell the Riverside Drive Property. While the motion was pending, the title company advised Applicant that there were two "open" building permits on the Riverside Drive property, which Applicant advised Client of. The Motion to Sell was granted.

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
Dana A. Suntag, Esq.	20.3	\$315.00	\$6,394.50
Loris L. Bakken, Esq.	94.4	\$295.00	\$27,848.00
Ricardo Z. Aranda, Esq.	5.3	\$250.00	\$1,325.00
Zoey P. Merrill, Esq.	7.7	\$225.00	\$1,732.50
Patrick Larsen, Esq.	24.2	\$195.00	\$4,719.00
Wendy A. Locke, Esq.	28.2	\$225.00	\$6,345.00
Deanna Fillon, Paralegal	0	\$90.00	\$0.00
Audrey Dutra, Paralegal	9.3	\$90.00	<u>\$837.00</u>
Total Fees For Period of Application			\$49,201.00

This total does not represent various deductions by Applicant, totaling .6 hours removed from Loris L. Bakken and 1.4 hours removed from Audrey A. Dutra; these deductions total \$303.00. Dckt. 298, Exh. A, p. 4, 5. Removing these deductions, the court comes to fees at \$48,898.00. Applicant has agreed to reduce the fees, inclusive of all costs, requested to \$35,000.00.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$816.47 pursuant to this applicant.

The costs requested in this Application are:

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10 per page	\$588.50
Postage		\$227.97
Total Costs Requested in Application		\$816.47

REDUCED FEES AND COSTS & EXPENSES ALLOWED

September 24, 2015 at 10:30 a.m.

Applicant seeks to be paid a single sum of \$35,000.00 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of \$35,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees, Costs, and Expenses	\$35,000.00
---------------------------	-------------

pursuant to this Application 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 Herum\Crabtree\Suntag ("Applicant"), Attorney for Alan S. Fukushima, the Chapter 7 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Professional Employed by Trustee

Fees, Costs, and Expenses in the amount of: \$35,000.00.

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 Alan Fukushima, 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.

No further or additional relief is granted.