

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

October 10, 2024 at 10:30 a.m.

1. [24-90407-E-7](#)  
[NF-1](#)

TERRY SCHAFFER  
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
8-27-24 [[19](#)]

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on August 27, 2024. By the court's calculation, 44 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 filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is XXXXXXX.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks dismissal of the case on the grounds that Terry Gene Schaffer ("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 8:00 a.m. on October 9, 2024. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

Debtor filed an Opposition on September 11, 2024, stating he attempted to call into the prior 341 Meeting but experienced technical difficulties. Docket 22.

**DISCUSSION**

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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, **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 Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris ("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 **XXXXXXX**.

~~**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including December 8, 2024.~~

# FINAL RULINGS

2. [23-90516-E-7](#)  
[KMT-3](#)

MICHAEL/LISA FALCONER  
James Mootz

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KRONICK,  
MOSKOVITZ, TIEDEMANN & GIRARD  
FOR GABRIEL P. HERRERA,  
TRUSTEES ATTORNEY(S)  
9-3-24 [\[50\]](#)

**Final Ruling:** No appearance at the October 10, 2024 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, Chapter 7 Trustee, creditors that have filed claims, and Office of the United States Trustee on September 3, 2024. By the court's calculation, 37 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.**

Nikki B. Farris, Chapter 7 Trustee, makes a First and Final Application for Fees on behalf of her general counsel, Kronick, Moskovitz, Tiedemann & Girard ("KMTG").

Fees are requested for the period January 14, 2024, through August 29, 2024. The order of the court approving employment of KMTG was entered on January 23, 2024. Dckt. 24. The Chapter 7 Trustee requests fees in the amount of \$1,750 at a reduced rate and no costs on behalf of KMTG.

## APPLICABLE LAW

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## 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 KMTG’s services for the Estate include requesting and being granted an order by the court to sell property of the estate, as well as submitting employment and fee applications. The Estate has \$3,500 of unencumbered monies to be administered as of the filing of the application. Mot. ¶ 6, Docket 50. The court finds the services were beneficial to the Chapter 7 Trustee and the Estate and were reasonable.

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

### **Fees**

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

Motion for Order Authorizing Sale of Estate Property and Employment and Compensation of Auctioneer: KMTG spent 5.1 hours in this category. KMTG communicated with the Chapter 7 Trustee and the auctioneer regarding the sale of a vehicle, and prepared a motion to approve the sale. Mot. 3:11-15, Docket 50.

Employment and Fee Applications: KMTG spent 3.9 hours in this category. KMTG prepared its own motion to employ and this Application. *Id.* at 3:8-10.

The fees requested are computed by KMTG 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</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Gabriel P. Herrera	9	\$350.00	<u>\$3,150.00</u>
<b>Total Fees for Period of Application (reduced rate)</b>			\$1,750.00

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that KMTG effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,750.00 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.

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

Fees	\$1,750.00
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Nikki B. Farris, Chapter 7 Trustee, on behalf of her general counsel, Kronick, Moskovitz, Tiedemann & Girard (“KMTG”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that KMTG is allowed the following fees and expenses as a professional of the Estate:

KMTG, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1,750.00,

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

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Final Ruling:** No appearance at the October 10, 2024 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, attorneys of record, parties requesting special notice, and Office of the United States Trustee on August 23, 2024. By the court’s calculation, 48 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.**

Walter R. Dahl, the Chapter 11 Subchapter V Trustee (“Applicant”) for the Bankruptcy Estate of Huacana Entertainment, Inc., makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of March 5, 2024 through the present. The order of the court approving employment of Applicant was entered on March 5, 2024. Docket 7. Applicant requests fees in the amount of \$5,066.50 and costs in the amount of \$14.22.

#### **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 assisting in case administration and plan confirmation. The court finds the services were beneficial to Client and the Estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 4.5 hours in this category. Applicant performed the following services: communications with U.S. Trustee personnel re case assignment and dates for initial debtor interview and meeting of creditors; review petition, schedules and statements; prepare for and attend initial debtor interviews and meetings of creditors; review Chapter 11 status reports and attend status conferences. Mot. 2:17-20, Docket 50.

Fee/Employment Applications: Applicant spent 2.4 hours in this category, and 1.2 hours of paralegal time. Applicant performed the following services: prepare, file and serve motion and supporting pleadings for first and final compensation for Subchapter V Trustee fee application; attend hearing on Subchapter V Trustee compensation motion. *Id.* at 2:25-27.

Plan & Disclosure Statement: Applicant spent 3.2 hours in this category. Applicant performed the following services: review as-filed plan of reorganization; review tabulation of ballots and declaration in support of confirmation; attend confirmation hearings. *Id.* at 3:4-5.

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</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Paralegal	1.2	\$140.00	\$168.00
Walter R. Dahl	10.1	\$485.00	<u>\$4,898.50</u>
<b>Total Fees for Period of Application</b>			\$5,066.50

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$14.22 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		\$1.80
Postage		\$12.42
Total Costs Requested in Application		\$14.22

## FEES AND COSTS & EXPENSES ALLOWED

### Fees

#### Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,066.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

### Costs & Expenses

First and Final Costs in the amount of \$14.22 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$5,066.50
Costs and Expenses	\$14.22

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 Walter R. Dahl, the Chapter 11 Subchapter V Trustee (“Applicant”) for the Bankruptcy Estate of Huacana Entertainment, Inc., having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Walter R. Dahl is allowed the following fees and expenses as a professional of the Estate:

Walter R. Dahl, Professional on behalf of the Bankruptcy Estate

Fees in the amount of \$5,066.50

Expenses in the amount of \$14.22,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as the Chapter 11 Subchapter V Trustee for the Bankruptcy Estate of Huacana Entertainment, Inc.

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