

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

**The Court has Reorganized the Items on the Calendar, With
All Final Rulings Placed in the Second Part, Commencing with Item #3**

October 18, 2018 at 10:30 a.m.

1. <u>18-90030</u> -E-11 <u>AB-1</u>	FILBIN LAND & CATTLE CO., INC. Matthew J. Olson	MOTION FOR COMPENSATION FOR ARCH & BEAM GLOBAL, LLC, FINANCIAL ADVISOR(S) 9-27-18 [<u>325</u>]
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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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2018. 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 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.
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October 18, 2018 at 10:30 a.m.

- Page 1 of 50 -

Arch & Beam Global, LLC, the Financial Advisor (“Applicant”) for Filbin Land & Cattle Co., Inc., the Debtor in Possession (“ΔIP”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 1, 2018, through August 31, 2018. The order of the court approving employment of Applicant was entered on May 18, 2018. Dckt. 174. Applicant requests fees in the amount of \$34,157.50 and costs in the amount of \$86.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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)). 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.

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: general case administration of the Estate; preparation for attendance of court hearings; real estate advisement; accounting and auditing of the Estate; reconstruction accounting of the Estate; and administration and objections to claims. The court finds the services were beneficial to ΔIP 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 4.4 hours in this category. Applicant assisted the Debtor in Possession by performing certain functions related to the administration of the Estate and property. This included the analysis of certain background information and docket items.

Preparation For and Attendance at Court Hearings: Applicant spent 5.9 hours in this category. Applicant assisted the Debtor in Possession with preparing for and attending court hearings. This includes the analysis of court filings by other parties and pre-trial rulings.

Real Estate Advisement: Applicant spent 1.9 hours in this category. Applicant assisted the Debtor in Possession with the analysis of real estate and particular sales. This includes meetings and calls with the Debtor in Possession and broker related to real estate strategy, process, and the review of documents, including tracking of progress.

Accounting and Auditing: Applicant spent 72.1 hours in this category. Applicant assisted the Debtor in Possession with work related to all accounting operations, data entry, journal entries, accounting reporting, preparation, and in some cases reconstruction, of books and records, month-end closing activities, including the preparation of Monthly Operating Reports. The accounting system was created from scratch and a complete QuickBooks accounting was established. The Applicant created eight months of financial statements, including establishing the complete and properly reflective chart of accounts in Quickbooks. This is a significant manual task, given the lack of a base accounting system and the difficulty in obtaining all records, receipts, and bank statements. Since charts of accounts vary from company to company, it takes time and thought to establish how to display the information in a proper light. In addition, the Applicant had to determine the treatment of pre- and post-petition items that included non-default and default interest, property taxes, and fees. The location and organization of receipts and bank statements was difficult, including the separation of personal and business items. This created additional time and delay in delivering the MORs.

Reconstruction Accounting: Applicant spent 16.6 hours in this category. Applicant assisted the Debtor in Possession with a detailed reconstruction of its books and records, which was used for development of MORs. Much of the detail of the task required to establish the full accounting system and challenges can be found in B270/90 Accounting/Auditing. Prior to Arch + Beam involvement, there were no recognizable books and records for reporting.

Claims Administration and Objections: Applicant spent 1.4 hours in this category. The Applicant assisted the Debtor in Possession with the analysis of the claims register and individual claims, including the beginning work for acceptance or rejection.

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
Howard Bailey	9.1	\$425.00	\$3,867.50
Scott Geary	93.2	\$325.00	\$30,290.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$34,157.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$86.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
IT Services	\$86.00	\$86.00
		\$0.00
Total Costs Requested in Application		\$86.00

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 Interim Fees in the amount of \$34,157.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Debtor in Possession from the available Estate Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of \$86.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available Estate Funds in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Debtor in Possession to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	\$27,326.00
Costs and Expenses	\$86.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Arch & Beam Global, LLC (“Applicant”), Financial Advisor for Filbin Land & Cattle Co., Inc., the Debtor in Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Arch & Beam Global, LLC, Professional employed by the Debtor in Possession

Fees in the amount of \$27,326.00
Expenses in the amount of \$86.00,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Debtor in Possession is authorized to pay 80% of the fees and 100% of the costs allowed by this Order from the available Estate Funds in a manner consistent with the order of distribution in a Chapter 11 case.

2. [18-90030-E-11](#)
[MF-12](#)

FILBIN LAND & CATTLE
CO., INC.
Matthew J. Olson

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF MACDONALD
FERNANDEZ LLP FOR RENO F.R.
FERNANDEZ III, SPECIAL
COUNSEL(S)
9-27-18 [\[330\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2018. 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 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.
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Macdonald Fernandez LLP, the Special Counsel ("Applicant") for Filbin Land & Cattle Co., Inc., the Debtor in Possession ("DIP"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 17, 2018, through July 31, 2018. The order of the court approving employment of Applicant was entered on April 6, 2018. Dckt. 129. Applicant requests fees in the amount of \$23,257.00 and costs in the amount of \$2,747.61.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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 Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). 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.

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 identifying and marshaling the Estate’s assets, including reviewing lease, analyzing the status and potential value of real property collateral, and corresponding with secured creditors regarding the extent of their liens against real property. Per the Applicant, the Estate will generate an estimated \$5,400,000.00 in net proceeds after the payment of liens and closing costs. The court finds the services were beneficial to ΔIP 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.

Asset Investigation: Applicant spent 0.9 hours in this category. Applicant assisted the Debtor in Possession with identifying and marshaling the Estate’s assets, including by reviewing leases, analyzing the status and potential value of real property collateral and corresponding with secured creditors regarding the extent of their liens against real property.

General Case Administration: Applicant spent 19.5 hours in this category. Applicant assisted the Debtor in Possession with his administration of this case, including by evaluating the status of the Debtor in Possession’s operations, drafting status reports, handling questions regarding the Debtor in Possession’s bank accounts, and developing and implementing an overall strategy for the management of the case. This category includes some time entries that arguably fit other categories but in context were best assigned to the case administration category.

Claims Analysis and Objections: Applicant spent 6.7 hours in this category. Applicant analyzed the components of claims asserted by secured creditors, guarantee claims, unsecured claims, litigation claims and potential tax claims and assisted the Debtor in Possession with developing strategies for handling such claims.

Case Commencement: Applicant spent 7.4 hours in this category. Applicant assisted the Debtor in Possession in commencing the within case, including by preparing and filing the Chapter 11 petition, preparing and filing the schedules of assets and liabilities and statement of financial affairs, preparing and filing amended schedules, preparing the initial status report and appearing at the hearing thereon, preparing for and appearing at the initial debtor interview (the “IDI”) by the United States Trustee, preparing for and appearing at the meeting of creditors held pursuant to Section 341(a) of the Bankruptcy Code, educating the Debtor in Possession with respect to his duties and assisting with issues regarding opening debtor in possession accounts.

Adversary Proceedings and Contested Matters: Applicant spent 1.6 hours in this category. Applicant assisted the Debtor in Possession with analyzing the grounds for and potential impact of a motion to determine compliance with the Single Asset Real Estate rules, the status of the Debtor’s registration with the Secretary of State and other issues.

Plan and Disclosure Statement: Applicant spent 7.6 hours in this category. Applicant has been assisting the Debtor in Possession in developing a plan of reorganization and disclosure statement. Although a plan has not been filed, drafts have been created and reviewed and issues impacting the eventual plan have been explored, including the impact of the Single Asset Real Estate rules. The Debtor in Possession successfully moved to extend the exclusivity periods relating to plan proposal and acceptance.

Relief from Stay Matters: Applicant has spent 0.3 hours in this category. Applicant has assisted the Debtor in Possession with analyzing and drafting a letter regarding the potential violation of the automatic stay by a creditor.

Retention of Professionals: Applicant has spent 27.4 hours in this category. Applicant has assisted the Debtor in Possession in successfully obtaining Court authority to employ the following professionals: Michael St. James, Esq.; Arch & Beam Global, LLC; Braun International; Judith Callaway; Charles Doyle of Business Debt Solutions, Inc. dba Business Capital; and the Firm itself. Employment of professionals in this case was more complex and difficult than usual because of the many objections raised by creditors to several of the proposed professionals, all of which objections the Debtor in Possession overcame.

Use, Sale, or Lease of Assets: Applicant has spent 3.3 hours in this category. Applicant assisted the Debtor in Possession in negotiating potential sales and obtaining court authority to sell certain real property, including by analyzing issues and terms regarding the stalking-horse bid. Following the period covered by this Application, sale efforts were successful in that a portion of the estate’s real property was sold for an amount sufficient to generate significant unencumbered funds to the estate.

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
Ian MacDonald	16.6	\$375.00	\$5,250.00 ^{FN.1}
Matthew Olson	28.7	\$275.00	\$7,892.50
Reno Fernandez	26.3	\$375.00	\$9,862.50
Samantha Brown	2.8	\$90.00	\$252.00
Total Fees for Period of Application			\$23,257.00

FN.1. In reviewing the Applicant's calculation in its Motion and the raw data provided in the supporting exhibits, the court notes the amount requested is lower than the calculations should provide (16.6 x 375 = \$6,225). The court has concluded the amount requested is an adjusted amount.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,474.61 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
PACER	\$1.80
Fax	\$53.80
Postage	\$370.91
Telephonic Court Appearance	\$30.00
NAICS Business Search	\$19.90
Chapter 11 Filing Fee	\$1,717.00
Photocopies	\$105.20
Court Transcripts	\$120.00
Court Redaction Fee	\$25.00

Court Filing Fee	\$31.00
Total Costs Requested in Application	\$2,474.61

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 Interim Fees in the amount of \$23,257 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available Estate Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of \$2,474.61 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved Debtor in Possession from the available Estate Funds in a manner consistent with the order of distribution under a Chapter 11 case.

Retainer

Counsel for the Debtor in Possession is holding \$7,833.00 of retainer monies for the services of this case in Counsel's client trust account.

Authorized amounts to be paid.

The court authorizes Debtor in Possession to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	\$18,605.60 (80% of allowed first interim fees)
Costs and Expenses	\$2,474.61

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331.

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 Macdonald Fernandez LLP (“Applicant”), Special Counsel for Filbin Land & Cattle Co., Inc., the Debtor in Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez LLP, Special Counsel employed by the Debtor in Possession

Fees in the amount of \$23,257.00

Expenses in the amount of \$2,474.61,

as a First Interim Allowance of Fees and Expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Counsel for the Debtor in Possession is authorized and shall first apply the \$7,833.00 retainer to, and then the Debtor in Possession is authorized to pay the remaining amount totaling 80% of the fees and 100% of the costs allowed by this Order from the available unencumbered monies of the bankruptcy estate in a manner as permitted under the Bankruptcy Code.

FINAL RULINGS

3. [18-90030-E-11](#) **FILBIN LAND & CATTLE** **CONTINUED MOTION TO USE CASH**
[STJ-12](#) **CO., INC.** **COLLATERAL (RETROACTIVE**
Matthew J. Olson **AUTHORIZATION)**
8-23-18 [284]

Final Ruling: No appearance at the October 18, 2018 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 23, 2018. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days’ notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. No opposition was filed in connection with the final hearing and the defaults of the non-responding parties are entered by the court.

The portion of the Motion for Authority to Use Cash Collateral seeking retroactive authorization for the use of cash collateral is granted and the court authorizes use of cash collateral for the months of January through August 2018.

SUMMARY OF PROCEEDINGS

Filbin Land & Cattle Co., Inc. (“Debtor in Possession”) moves for an order approving the use of cash collateral generated from rents of its property located adjacent to the Ingram Creek Road exit from Interstate 5 in the area of Westley, California (“Property”) on a retroactive basis for the period of January 17, 2018, through the date of the original noticed hearing date (September 6, 2018) and up to November 30, 2018. Debtor in Possession requests the use of cash collateral for the immediate preservation of its estate and collateral.

Debtor in Possession provides an overview of the expenses, alleged as necessary for the preservation of its estate, as follows:

	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018
Contractors			\$1,200.00	\$600	\$10,387	\$5,363	\$1,150.00
Deposits							\$2,475.00
Maintenance & Repair						\$1,624	\$19.00
Meals				\$148	\$343	\$149	\$122.00
Misc. (incl Bank Fees)	\$45	\$40	\$379.00	\$32	\$367	\$7	\$3.00
Office Supplies /Other	\$107	\$71	\$270.00	\$421	\$824	\$579	\$22.00
Personal Property Lease					\$5,025		
Transportatio n/Gas			\$75.00	\$119	\$381	\$301	
US Trustee Fees				\$325		\$325	
Utilities & Ins			\$278.00	\$625	\$4,367	\$2,356	\$837.00
Total	152	111	2,202.00	21,694	21,694	10,704	4,628.00

SEPTEMBER 6, 2018 HEARING

The Motion was heard September 6, 2018. Dckt. 305. Based on the pleadings and arguments made at the hearing, the court found the Motion did not identify the grounds and Movant does not present the legal authority for retroactive authorization of cash collateral. Due the seriousness of the Debtor in Possession using cash collateral without authorization (which special counsel stated at the hearing was counter to the instructions given by counsel to the responsible representative of the Debtor in Possession), rather than denying that portion without prejudice, the court bifurcated the portion of the Motion seeking retroactive authorization and set it for a separate hearing.

The court issued an order (1) granting the Motion as to use of cash collateral for the months of September, October, and November 2018; (2) continuing the hearing to November 29, 2018, for consideration of future use of cash collateral; and (3) continued the hearing on the portion of the Motion seeking retroactive use of cash collateral to October 18, 2018. Order, Dckt. 308.

SUPPLEMENTAL BRIEF

Debtor in Possession filed a Supplemental Brief renewing its request for retroactive use of cash collateral, and amending the request to include the month of August 2018. Dckt. 317. Debtor in Possession asserts it has been unable to identify decisional law which is directly on point, but that the Ninth Circuit has developed a body of law respecting the consideration of retroactive relief in related areas which is sufficiently consistent as to provide potentially useful instruction.

Debtor in Possession argues that the use of cash collateral without permission did not cause substantial harm in this case, the amount of cash being modest (\$45,000 over eight months) and all of it used for appropriate business needs. *Id.* at 3:11.5-14.5; *See also* Declaration, Dckt. 286.

Debtor in Possession argues further that the principles of equity support retroactive approval because:

The funds were expended to preserve, protect and benefit the estate, as they will be going forward. Filbin DIP's professionals did not become aware of the use of cash collateral until late June or early July, and they thereafter moved forward to disclose the circumstances and seek retroactive relief as rapidly as practicable. Filbin DIP's President had been confused because he was authorized to spend funds in the ordinary course of business in his own individual Chapter 11 case. There has subsequently been full compliance with the statutory requirements, and the instant case is a circumstance in which retroactive authorization is appropriate: the funds were used for appropriate purposes, no one has been harmed by the use of cash, the affected creditors will be repaid in full within weeks, and Filbin DIP has been conforming to all of the requirements of the Court and the Code.

Dckt. 317 at 5:8.5-19.

Debtor in Possession concludes the Court clearly has the power and authority to grant or deny retroactive use of cash collateral, citing to law providing "the bankruptcy court's determination of whether to issue an order *nunc pro tunc* 'is reviewed for abuse of discretion or erroneous application of the law.'" *See Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 763, (9th Cir. 2000).

The Supplemental Brief requests the court authorize the following use of cash collateral:

	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018
Contractors			\$1,200	\$600	\$10,387	\$5,363	\$1,150.00	
Deposits							\$2,475.00	\$2,560
Maintenance & Repair						\$1,624	\$19.00	
Meals				\$148	\$343	\$149	\$122.00	
Misc. (incl Bank Fees)	\$45	\$40	\$379	\$32	\$367	\$7	\$3.00	\$187
Office Supplies /Other	\$107	\$71	\$270	\$421	\$824	\$579	\$22.00	\$224
Personal Property Lease					\$5,025			
Transportatio n/Gas			\$75	\$119	\$381	\$301		
US Trustee Fees				\$325		\$325		
Utilities & Ins			\$278	\$625	\$4,367	\$2,356	\$837.00	
Other Taxes								\$829
Total	\$152	\$111	\$2,202	\$21,694	\$21,694	\$10,704	\$4,628	\$3,800

APPLICABLE LAW

Use of Cash Collateral

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The Motion seeks retroactive authorization for the months of January through August 2018.

Debtor in Possession's argument are well-taken. The amount of cash collateral sought, \$45,561, is not substantial. The cash collateral was used for normal expenses of the Debtor in Possession. Paying Debtor in Possession's expenses and allowing it to continue operation is in the interest of creditor's and the Estate. Therefore, the portion of the Motion seeking retroactive authorization is granted.

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 Authority to Use Cash Collateral filed by Filbin Land & Cattle Co., Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the portion of the Motion seeking retroactive authorization is granted, pursuant to this order, retroactively for the period January 17, 2018, through September 6, 2018, and the cash collateral may be used to pay the following expenses:

	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018
Contractors			\$1,200	\$600	\$10,387	\$5,363	\$1,150.00	
Deposits							\$2,475.00	\$2,560
Maintenance & Repair						\$1,624	\$19.00	
Meals				\$148	\$343	\$149	\$122.00	
Misc. (incl Bank Fees)	\$45	\$40	\$379	\$32	\$367	\$7	\$3.00	\$187
Office Supplies /Other	\$107	\$71	\$270	\$421	\$824	\$579	\$22.00	\$224
Personal Property Lease					\$5,025			
Transportatio n/Gas			\$75	\$119	\$381	\$301		
US Trustee Fees				\$325		\$325		
Utilities & Ins			\$278	\$625	\$4,367	\$2,356	\$837.00	
Other Taxes								\$829
Total	\$152	\$111	\$2,202	\$21,694	\$21,694	\$10,704	\$4,628	\$3,800

4. [18-90030](#)-E-11 **FILBIN LAND & CATTLE** **MOTION FOR COMPENSATION FOR**
[STJ-15](#) **CO., INC.** **MICHAEL ST. JAMES, DEBTORS**
 Matthew J. Olson **ATTORNEY(S)**
 9-27-18 [\[318\]](#)

Final Ruling: No appearance at the October 18, 2018 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession’s Attorney, creditors, and Office of the United States Trustee on September 26, 2018. By the court’s calculation, 22 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 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.

The Motion for Allowance of Professional Fees is granted on an interim basis for \$50,000.00 in fees and \$2,168.17 in costs, which the Debtor in Possession may pay immediately, and continued for further hearing at 10:30 a.m. on November 15, 2018 (specially set to the Sacramento Division Courtroom).

Michael St. James., the Attorney (“Applicant”) for Filbin Land & Cattle Co., Inc., the Debtor in Possession (“ΔIP”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 13, 2018, through September 13, 2018. The order of the court approving employment of Applicant was entered on March 25, 2018. Dckt. 125. Applicant requests fees in the amount of \$104,906.25 and costs in the amount of \$2,168.17.

This is the first fee application for Applicant. In the Application he recounts the order authorizing employment being entered on March 27, 2018. No prior interim application for fees has been made.

In the Application the various *bona fides* of Applicant are cited: Business Bankruptcy Law Certified, State Bar Legal Special Certification in Bankruptcy, “Super Lawyer” since 2006, and “Best Lawyer” since 2007. Applicant further directs the court to various articles he has written and notes that he has represented Debtors in Possession, Trustees, Creditors’ Committees, Reorganization Trustees, landlords, and creditors “in some of the largest and most complex bankruptcy cases in the Bay Area.”

The court notes that Applicant has voluntarily reduced his fees or had some “no charge” items as part of the \$104,906.25 in professional fees.

But the court also notes that it has had concerns about the representation provided, the level of “sophistication,” and the lack of any “knowledge” or awareness of Applicant that the Debtor in Possession, whose only asset was real property subject to a deed of trust and for which the only income were rents, used cash collateral without authorization. The court has had further concern that the sophisticated professional financial managers could not generate monthly operating reports for six months (while the Debtor in Possession was using cash collateral without authorization), and could only do so when the Debtor in Possession had a proposed sale for \$2,700,000 (the effect of which would nullify the angst of the creditor whose cash collateral was being secretly used). Applicant also assisted the principal of the Debtor in Possession (whose business acumen had resulted in the two related bankruptcy cases filed and the prospect of losing reportedly hundreds of millions of dollars of real property) in trying to sell real property, as the fiduciary of this bankruptcy estate, without hiring a real estate professional. The Debtor in Possession had a purchaser for \$2,700,000 (which the court refused to “preliminarily approve as the buyer”), but then after the court refused to proceed with the approval of the sale and required the employment of a real estate broker, at the continued hearing active bidding occurred and the property sold for \$8,300,000, with two \$8,000,000 +/- back up buyers approved.

Much of the legal services provided do not appear to be that commensurate with a \$625.00 an hour billing rate. Some of the time spent appears to be of limited value to a fiduciary debtor in possession (but may be consistent with the wishes of a financially less-than-educated debtor who is bound and determined to do things his way - without regard to his fiduciary duties as a debtor in possession or the responsible representative of a debtor in possession).

While the court may have concerns, Applicant is entitled to fair compensation, which may well be the \$100,000+ fees herein sought. The court continues the hearing to the next available date when the judge to whom the case is assigned can hear it, after allowing adequate time for further review and consideration in the clear light of day.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). 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.

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)).

The court finds the services described, *infra*, and within the Motion and supporting pleadings were beneficial to DIP 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.

Arambel Coordination : Applicant spent 20.9 hours in this category, but has opted not to seek fees for these services. Applicant attended weekly meetings of the Debtors in Possession's insolvency professionals were scheduled, undertook to be conversant with the status and development of matters in the companion case and provided its counsel and advice regarding such developments, and attended many hearings in the companion case..

Special Counsel Coordination: Applicant is seeking fees for 3 hours in this category, which Applicant describes as being heavily reduced. Applicant engaged in a certain amount of communication and coordination with special counsel to determine matters to delegate.

Consolidation: Applicant spent 0.6 hours in this category. Applicant reviewed a memo in which the U.S. Trustee expressed concerns about administrative consolidation; conferred with special counsel and Filbin DIP regarding the merits and demerits of administration consolidation; and thereafter reviewed and approved a form of pleading withdrawing the administrative consolidation Motion.

Schedules: Applicant spent 2.1 hours in this category. Applicant reviewed and analyzed iterations of the amended Schedules and counseled Filbin DIP regarding them (though primary responsibility for the preparation of the Amended Schedules was assigned to special counsel). Applicant also reviewed

and analyzed the current circumstances of an ADA claim and concluded that it was properly characterized as disputed in the Amended Schedules.

Professionals: Applicant spent 18.4 hours in this category. Applicant performed services regarding its employment application, the application for employment of an accountant firm to prepare monthly operating reports, applications of employment for a broker and negotiation of that broker's fee, and the potential need for a tax planning professional.

Filbin Creditors : Applicant spent 4.45 hours in this category. Applicant conferred with counsel for Filbin Creditors regarding their settlement proposal, the circumstances of the case, potential consensual Plan treatment, and various other concerns of Filbin Creditor throughout the case.

Summit: Applicant spent 15.4 hours in this category. Applicant performed services regarding Creditor Summit's guaranty claim, originally asserted in the amount of \$16 million, and ultimately filed in the amount of \$42 million, including analysis concluding the claim was potentially avoidable as a fraudulent transfer and related settlement negotiations.

Case Status Conference: Applicant spent 7.25 hours in this category. Applicant performed services regarding the Case Status Conference, including corresponding with special counsel and preparing a case status report for the impending.

Exclusivity: Applicant spent 6.1 hours in this category. Applicant performed services to extend the exclusivity period including performing legal research, drafting motions and supporting documents, and appearing at court.

Monthly Operating Reports: Applicant spent 4.15 hours in this category. Applicant performed services related to the filing of Monthly Operating reports, including review and analysis of the draft filings.

Cash Collateral: Applicant spent 5.95 hours in this category. Applicant performed services regarding the use of cash collateral, including the analysis of the issue discovered through the Monthly Operating Reports and appearance at court for a motion to use cash collateral.

Initial Plan: Applicant spent 8.85 hours in this category. Applicant performed services related to the formulation of Debtor in Possession's initial plan for reorganization, including conferring with Debtor in Possession and drafting of Plan provisions.

SARE Motion: Applicant spent 8.6 hours in this category. Applicant performed services related to determining whether this was a SARE case, including counseling Debtor in Possession on the issue and drafting a SARE motion and supporting pleadings.

Plan of Reorganization: Applicant spent 6.65 hours in this category. Applicant performed services related to the confirmation of a Plan of Reorganization, including expansion of the Plan of Reorganization.

Disclosure Statement: Applicant spent 12.85 hours in this category. Applicant performed services related to obtaining approval of the Disclosure Statement, including conferencing with Debtor in Possession and performing extensive drafting.

Initial Sale: Applicant spent 18 hours in this category. Applicant performed services related to the sale of real property held by Debtor in Possession, including conferencing with Debtor in Possession, reviewing a sale agreement, and appearing at court hearings.

Sale Motion : Applicant spent 13.1 hours in this category. Applicant drafted a motion seeking preliminary approval of the Sale Agreement with Boyett Petroleum and the establishment of bidding procedures respecting potential overbids, in addition to drafting supporting documents and conferring with Debtor in Possession.

Sale Free and Clear: Applicant spent 22.5 hours in this category. Applicant performed services related to the sale free and clear of liens of real property held by Debtor in Possession, including counseling Debtor in Possession, evaluating concerns about a tenant on the real property, drafting the motion and supporting documents, and reviewing opposition arguments and motions.

Overbid : Applicant spent 20.3 hours in this category. Applicant performed services related to finding overbidders for the sale of Debtor in Possession's real property, including drafting the notice of opportunity to overbid, preparing disclosures to read into the record at the outset of the auction on the real property, and conferring with Debtor in Possession regarding the hire broker's recommendation's.

Lot Line Adjustment: Applicant spent 4.7 hours in this category. In order to effectuate the sale referenced, *supra*, Applicant researched the process for lot line adjustments, and conferred with Debtor in Possession and an engineer regarding the submission of a lot line adjustment.

Closing the Sale: Applicant spent 0.9 hours in this category. Applicant performed services related to the closing of the sale discussed, *supra*, including conferring with Debtor in Possession about escrow companies.

Remaining Property: Applicant spent 1.2 hours in this category. Applicant conferred with Debtor in Possession and the hired broker in this case regarding the marketing of remaining real property held by Debtor in Possession; sought and obtained the broker's opinion of value and listing agreement. Following the Auction; and reviewed and analyzed a back-up bidder's expression of interest in a portion of the remaining property and participated in an exchange of memos regarding it.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,168.17 pursuant to this application

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 Interim Fees in the amount of \$104,906.25 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available Estate Funds in a manner consistent with the order of distribution under a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of \$2,168.17 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved 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.

The court authorizes by interim order the immediate payment of \$50,000.00 in fees and \$2,168.17 in expenses to be applied to the First Interim Fees, pending final hearing on this Motion.

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 Michael St. James (“Applicant”), Attorney for Filbin Land & Cattle Co., Inc., the Debtor in Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael St. James is as an initial allowance of First Interim Fees, as counsel for the Debtor in Possession:
Michael St. James, Professional employed by the Debtor in Possession

Fees in the amount of \$50,000.00
Expenses in the amount of \$2,168.17,

pursuant to 11 U.S.C. § 331 and subject to further review and allowance at the final hearing on this Motion, and final allowance pursuant to 11 U.S.C. § 330. The Debtor in Possession is authorized to pay the above amount from unencumbered monies of the bankruptcy estate as permitted under the Bankruptcy Code.

IT IS FURTHER ORDERED that the hearing on this Motion is continued to 10:30 a.m. on November 15, 2018, specially set to be heard in Courtroom 33 of the United States Bankruptcy Court, Sacramento Division, 501 I Street, Sacramento,

[illegible]

James Salven, Certified Public Account for the Chapter 7 Trustee (“Applicant”) having filed a Notice of Withdrawal which this court construes to be an *Ex Parte* Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Final Application For Allowance Of Professional Fees And Expenses Of Accountant For Trustee was dismissed without prejudice, and the matter is removed from the calendar.**

6. [13-90323](#)-E-12
[FW](#)-18

FRANCISCO/ORIANA SILVA
Peter L. Fear

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL, PC
FOR PETER L. FEAR, DEBTORS'
ATTORNEY(S)
9-10-18 [\[265\]](#)**

Final Ruling: No appearance at the October 18, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Chapter 12 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on September 10, 2018. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Fear Waddell, P.C., the Attorney ("Applicant") for Francisco Silva and Oriana Silva, the Debtor's ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Final Fees are requested for the period December 1, 2013, through August 30, 2018. The order of the court approving employment of Applicant was entered on March 29, 2018. Dckt. 10. Applicant requests fees in the amount of \$25,673.50 and costs in the amount of \$1,123.24.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). 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.

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 fee applications, adversary proceedings, claims administration, preparing plan statements, and closing the case. 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 14 hours in this category. Applicant spoke to an attorney and the debtors regarding landlord/tenant issues, corresponded with various creditors regarding case issues, and prepared multiple status reports for status conferences, as well as appearing at those conferences. Applicant also analyzed tax issues, and corresponded with Stanislaus County regarding property tax issues and the automatic stay.

Fee/Employment Applications: Applicant spent 11.70 hours in this category. Applicant finalized the interim fee applications, prepared an application to employ special counsel, and prepared this instant final application and supporting documents.

Assumption/Rejection of Leases and Contracts: Applicant spent 2.30 hours in this category. Applicant prepared an ad, filed a motion to approve the lease of the debtor's dairy facility, and corresponded with various parties regarding the motion.

Adversary Proceeding v. Stanislaus County: Applicant spent 11.70 hours in this category. After confirmation of the modified plan, the debtor informed Applicant that Stanislaus County had recorded multiple Notices of Tax Collector's Impending Power to Sell on real property of the bankruptcy estate. Applicant demanded that Stanislaus County rescind those recordings on the basis that they violated the automatic stay of 11 U.S.C. § 362. When Stanislaus County did not do so by the stated deadline, Applicant

prepared an adversary proceeding to enforce the stay. Prior to the filing of this adversary proceeding, Stanislaus County did, in fact, rescind the recorded notices, making the adversary proceeding unnecessary.

Claims Administration and Objections: Applicant spent 29.50 hours in this category. Applicant prepared objections to seven proofs of claim filed by various creditors who erroneously filed as priority claims. These objections were sustained. Also, in conjunction with a modified plan, Applicant prepared an objection to the amended claims of Stanislaus County, which calculated amounts due after the filing of the petition. Stanislaus County opposed this objection, and Applicant expended a significant amount of time researching and analyzing issues and communicating with counsel for the county. In conjunction with plan confirmation, Applicant was able to negotiate a settlement which resulted in Stanislaus County withdrawing its opposition to debtor's objection to claim, and the objection was dismissed without prejudice based on the resolution in the modified plan.

Plan and Disclosure Statement: Applicant spent 30.30 hours in this category. Due to late-filed property tax claims, it was necessary for debtor to modify their Chapter 12 Plan to pay those claims through the plan. Applicant worked with the Debtor to prepare a modified plan, as well as all calculations and supporting documents, and communicated with various parties regarding plan issues. Stanislaus County objected to the modified plan. After appearing at the initial hearing on the modified plan, Applicant engaged in extensive negotiations with counsel for Stanislaus County, ascertaining and calculating the amounts due, and how those amounts should be paid through the plan. Through these negotiations, Applicant was able to resolve the issues raised by the county, and prepared a stipulation resolving their objection. Applicant also communicated with the Chapter 12 trustee's office regarding this stipulation and resolution of these issues. After appearing at an additional confirmation hearing, Applicant prepared the order confirming the modified plan, which was entered on July 24, 2016. Applicant communicated with the debtors regarding this plan and confirmation issues.

Case Closing: Applicant spent 7 hours in this category. The debtors' last payment in this Chapter 12 plan is scheduled to be paid in September, 2018. At that time, Applicant will be required to expend additional time to assist the debtors with case closing issues. Case closing work is performed by attorney Gabriel J. Waddell, whose current billing rate \$295.00 per hour, and Applicant believes that a reasonable (but low, as demonstrated below) estimate for the time necessary to assist debtors with case closing is 7.0 hours.

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
Peter L. Fear	0.30	\$295.00	\$88.50
Peter L. Fear	6.00	\$310.00	\$1,860.00
Peter L. Fear	3.20	\$325.00	\$1,040.00

Peter L. Fear	12.00	\$340.00	\$4,080.00
Peter L. Fear	0.8	\$360.00	\$288.00
Gabriel J. Waddell	2.5	\$210.00	\$525.00
Gabriel J. Waddell	16.30	\$240.00	\$3,912.00
Gabriel J. Waddell	32	\$260.00	\$8,320.00
Gabriel J. Waddell	1.5	\$280.00	\$420.00
Gabriel J. Waddell	5.9	\$295.00	\$1,740.50
Gabriel J. Waddell (estimated fees associated with future closing services)	7	\$295.00	\$2,065.00
Stacia J. (Biggs) Wesseler	0.2	\$95.00	\$19.00
Katie Waddell	1.5	\$100.00	\$150.00
Katie Waddell	2.2	\$115.00	\$253.00
Katie Waddell	0.5	\$150.00	\$75.00
Katie Waddell	4.1	\$195.00	\$799.00
Keane E. Anrig	0.3	\$60.00	\$18.00
Kayla Schlaak	0.1	\$60.00	\$6.00
Kayla Schlaak	0.2	\$60.00	\$14.00
Total Fees for Period of Application			\$25,673.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$14,703.00	\$14,703.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$14,703.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,123.24 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$747.00.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	N/A	\$625.35
Postage	N/A	\$348.49
Court Call	N/A	\$149.40
Total Costs Requested in Application		\$1,123.24

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$25,673.50 and prior Interim Fees in the amount of \$747.00 are approved pursuant to 11 U.S.C. § 330 to 11 U.S.C. § 330 and authorized to be paid by the Chapter 12 from the available Plan Funds in a manner consistent with the confirmed Plan.

Costs & Expenses

Second and Final Costs in the amount of \$1,123.24 and prior Interim Costs in the amount of \$747.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 12 Trustee under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 12 Trustee to pay the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 12 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$25,673.50
Costs and Expenses	\$1,123.24

pursuant to this Application and prior interim fees of \$ 14,703.00 and interim costs of \$747.00 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 Fear Waddell, P.C. (“Applicant”), Attorney for Francisco Silva and Oriana Silva, the Debtor’s, (“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 Fear Waddell, P.C. is allowed the following fees and expenses as a professional of the Estate:

Fear Waddell, P.C., Professional employed by the Debtor’s

Fees in the amount of \$25,673.50
Expenses in the amount of \$1,123.24,

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

The fees and costs pursuant to this Motion, and fees in the amount of \$14,703.00 and costs of \$ 747.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 12 Trustee 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.

7. [18-90639](#)-E-7

ALICIA HITCH
Scott J. Sagaria

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-18 [[12](#)]**

Final Ruling: No appearance at the October 18, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 32 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: \$335.00 due on August 31, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection 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.

8. [18-90640](#)-E-7

CESAR ORDAZ-CASTILLO
Scott J. Sagaria

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-14-18 [\[11\]](#)

Final Ruling: No appearance at the October 18, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 32 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: \$335.00 due on August 31, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection 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.

Final Ruling: No appearance at the October 18, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 32 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: \$335.00 due on August 31, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue 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.

Final Ruling: No appearance at the October 18, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 32 days' notice has been provided.

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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.

Final Ruling: No appearance at the October 18, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 32 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: \$335.00 due on August 31, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection 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.

Final Ruling: No appearance at the October 18, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on September 4, 2018. 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). 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 Debtor in Possession, Premier West Coast Properties LLC ("Debtor in Possession"), seeks dismissal of the Chapter 11 case. Debtor in Possession states in its Motion the case was filed because the senior lien holder Northeast Bank scheduled a trustee's sale and managing member Brent Hill believed there was still significant equity in the commercial property. Declaration, Dckt. 36 at ¶ 3. Shortly after filing this case, the junior lien holder SBA purchased the note for Northeast Bank's senior trust, and subsequently agreed to amortize the consolidated mortgage. *Id.*, ¶ 4. Debtor in Possession has worked out a payment plan for its only other debt, owed to the Stanislaus County Tax Collector. *Id.*, ¶ 6.

Debtor in Possession argues in its Motion that dismissal is in the best interest of creditors and the estate because Debtor in Possession has complied with all reporting requirements and paid all required quarterly fees. Dckt. 34.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and

the estate.”” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

RULING

Debtor in Possession has shown it is working with the remaining creditors to provide for their claims outside the bankruptcy case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 11 case filed by the Debtor in Possession, Premier West Coast Properties LLC (“Debtor in Possession”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the October 18, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2018. 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.

Eric J. Nims, the Chapter 7 Trustee, ("Applicant") for the Estate of Leon H. Bartlett, Inc. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period March 21, 2012, through April 11, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not—

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

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A 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 Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). 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 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’s supporting pleadings shows that Applicant’s services for the Estate include the reduction of all scheduled and known assets to cash, and the disbursement of \$163,463.70 to creditors and Estate expenses. The Estate has \$121,224.81 remaining to be administered as of the filing of the application with the planned disbursement of \$109,397.37 to three priority unsecured claims. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

In the Motion, Applicant merely states “[Applicant] was actively involved in administering all the assets in this case. As set forth in the declaration of [Applicant] and Exhibits filed in support of the Motion, the activities performed, time spent and costs incurred all support the summary of actions set forth above.” The reference to the above summary is: “[Applicant] administered additional assets, including tax and vendor refunds, and accounts receivables. [Applicant] also administered environmental remediation funds paid by the State of California Water Resources Control Board.” ^{FN.1.}

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	\$6,018.00
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$11,768.10
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$11,768.10
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$11,768.10

The fees are computed on the total sales generated \$170,362.09 of net monies (exclusive of these requested fees and costs), with an estimated gross value of \$109,397.37 remaining in claims currently being pursued.

FN.1 In reviewing the Motion, the court notes that the Trustee has stated with particularity the activities of the Trustee upon which his commission to be set by the court as:

Nims was actively involved in administering all the assets in this case. As set forth in the declaration of Nims and Exhibits filed in support of the Motion, the activities performed, time spent and costs incurred all support the summary of actions set forth above.

Motion ¶ 2, Dckt. 1051. If the actions of the Trustee upon which the court is to determine the reasonableness of a commission is to be based can be stated in one sentence, it could appear that a very low commission rate would be “reasonable.” Further, the Trustee and counsel (who is compensated for preparing the required pleadings) instructing the court to read the declaration and all of the exhibits filed, and then to provide legal services to the Trustee in setting forth the grounds the court could believe to support a commission for the Trustee is not proper. It is not the court’s role to state grounds for a party.

A review of the Declaration provides the court with the Trustee’s factual determination that “It took many months to administer debtor’s assets, negotiate and resolve disputes regarding claims issues, and other tasks.” Declaration ¶ 4, Dckt. 1054. However, the Trustee feels no need to provide the court with such disputes and other tasks. Telling the court to read Exhibit C for a list of assets administered and Exhibit D for cash disbursed now has the court assembling testimony for the Trustee.

The major work testified to by the Trustee is that he prepared his Trustee Compensation and Expense Worksheet and Time Sheet Report. While important activities, preparing one’s compensation documents is not indicative of a substantial commission.

No attempt is made by the Trustee to provide narrative testimony of his work in the case, what was accomplished, and the serious challenges he faced.

The court declines Trustee’s and counsel’s request (instruction) to wade through 48 pages of exhibits to assemble the grounds and construct the testimony of the Trustee. Exhibits, Dckt. 1055.

While in this case, the court knowing the complexities of the case and the relatively modest trustee fees, the court’s grants the Motion, Trustee and counsel should not expect such a “pass” in the future. At best, it may be necessary for the court to conduct an extensive evidentiary hearing on the issue. At worst, such thin showing may justify a small percentage commission.

While the Trustee fees may be modest, fee application is the time for a Trustee or counsel to show the accomplishments in the case, the “trials” faced, and the extraordinary level of professional service we see in this District. Such can be provided as part of the narrative in the declaration, which is restated as grounds (not merely cut and pasted) in the Motion. The Trustee has clearly well earned his compensation in this case and should not be afraid/too modest to state why.

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 \$11,768.10 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 \$121,224.81 of unencumbered monies to be administered. The Chapter 7 Trustee took actions including: the reduction of all scheduled and known assets to cash, and the disbursement of \$163,463.70 to creditors and Estate expenses. Applicant's efforts have resulted in a realized gross of \$285,260.09 recovered for the estate. Dckt. 1045, 1055.

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	\$11,768.10
Costs and Expenses	\$59.34

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 Eric J. Nims, 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 Eric J. Nims is allowed the following fees and expenses as a professional of the Estate:

Eric J. Nims, the Chapter 7 Trustee

Fees in the amount of \$11,768.10
Expenses in the amount of \$59.34,

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.