

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

October 31, 2024 at 10:30 a.m.

1. [22-90225](#)-E-7
[WF-7](#)

AVINASH SINGH
David Johnston

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WILKE FLEURY LLP
FOR DANIEL L. EGAN, TRUSTEES
ATTORNEY(S)
10-10-24 [\[172\]](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on October 10, 2024. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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The Motion for Allowance of Professional Fees is granted.
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October 31, 2024 at 10:30 a.m.

- Page 1 of 16 -

Wilke Fleury LLP (“Applicant”), counsel to Geoffrey Richards, the Chapter 7 Trustee (“Trustee, “Client”), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of October 1, 2023 through September 30, 2024 in the amount of \$17,708.50 in fees and \$556.90 in costs. The order of the court approving employment of Applicant was entered on June 1, 2023. Dckt. 116. Applicant earned \$18,798.50 in fees but has agreed to a voluntary discount of \$1,090.

Trustee submitted a consent statement to the request for fees on October 10, 2024. Docket 176.

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 negotiating a settlement with Debtor in this case that generated substantial funds for the Estate. Moreover, Applicant engaged in extended effort with Debtor to obtain compliance with the settlement, resulting in recovering \$170,000 of the \$275,000 settlement amount. Mot. 4:5-11, Docket 172. The Estate has \$132,113.42 of unencumbered monies to be administered as of the filing of the application. *Id.* 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 9 hours in this category. Applicant represented and advised the Trustee regarding the administration of the case. Mot. 4:19-24, Docket 172.

Efforts to Assess and Recover Property of the Estate: Applicant spent 20.5 hours in this category. Applicant’s work involved obtaining court approval of the settlement with the Debtor, and then extensive work attempting to enforce the settlement. *Id.* at 4:26-5:3.

Fee/Employment Applications: Applicant spent 8 hours in this category. Applicant prepared and prosecuted its Application for First Interim Allowance of Fees and Costs. *Id.* at 5:5-9.

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
Jason G. Eldred	5.8	\$365.00	\$2,117.00
Daniel L. Egan	19.8	\$545.00	\$10,791.00
Daniel L. Egan	11.9	\$495.00	<u>\$5,890.50</u>
Total Fees Requested for Period of Application			\$17,708.50

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	\$36,246.50	\$36,246.50
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$36,246.50	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$556.90 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$628.24.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Attorney Services	-----	\$387.60
Certified Copies		\$16.00
Photocopies		\$109.80
Postage		\$43.50
Total Costs Requested in Application		\$556.90

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$ 17,708.50 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 Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second Interim Costs in the amount of \$556.90 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 Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$17,708.50
Costs and Expenses	\$556.90

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 Wilke Fleury LLP (“Applicant”), counsel to Geoffrey Richards, the Chapter 7 Trustee (“Trustee, “Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Wilke Fleury LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$17,708.50
Expenses in the amount of \$556.90,

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 Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, attorneys of record, all creditors and parties in interest, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 4 days' notice was provided. The court set the hearing for October 22, 2024. Dckt. 28.

The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----.

<p>The Motion for Authority to Use Cash Collateral is denied.</p>
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October 31, 2024 Hearing

The court continued the hearing on this Motion, having granted the Motion on an interim basis permitting the use of cash collateral through October 31, 2024. Interim Order, Docket 35. Debtor in Possession was to pay \$10,000 to Poppy Bank by October 30, 2024. *Id.* Debtor in Possession was to pay the landlord, Central Valley Associates ("CVA"), \$23,208.40 also by October 30, 2024.

Reporting if these payments were made, at the hearing, **XXXXXXX**

On October 22, 2024, CVA and Poppy Bank filed Oppositions. Dockets 31, 33. CVA opposes granting the Motion on the following grounds:

1. Debtor in Possession has failed to comply with local regulations. As such, Debtor in Possession cannot operate postpetition pursuant to 28 U.S.C. § 959(b), which states:

Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

Opp’n 4:2-12, Docket 31.

2. Moreover, Debtor in Possession’s lease rights have been terminated prepetition. Pursuant to *In re Windmill Farms*, 841 F.2d 1467 (9th Cir. 1994), a lease terminates under California law “for nonpayment of rent at least by the time the lessor files an unlawful detainer action, provided that a proper three days' notice to pay rent or quit has been given, and the lessee has failed to pay the rent in default within the three-day period, and further provided that the lessor's notice contained an election to declare the lease forfeited.” Here, a notice of default was provided, the period expired, and an ejectment action has been filed. Therefore, Debtor in Possession does not have lease rights.

Opp’n 5:1-10.

On October 29, 2024, CVA filed the Declaration of Karen Sears in support of its Opposition. Decl., Docket 40. Ms. Sears authenticates the exhibits filed with the Declaration, testifying that Debtor in Possession breached the Ground Sublease in 2018 and has been in default since. *Id.* at ¶ 11. Debtor in Possession also never cured the defaults after CVA served Debtor in Possession with a “Thirty Day Notice to Perform Covenant or Surrender Possession.” *Id.* at ¶ 12. Therefore, Ms. Sears states she has been advised by her counsel that the lease was terminated prepetition. *Id.* at ¶ 14.

Poppy Bank opposes granting the Motion on the following grounds:

1. Debtor in Possession is in serious default under the terms of the loan with Poppy Bank. Moreover, Debtor in Possession was unable to keep payments current on its property taxes. Opp’n 2:1-3:10, Docket 33.
2. Debtor in Possession is operating the Modesto Hotel illegally and is attempting to gain authority to use cash collateral to operate the hotel in violation of the City’s Ordinance. Prior to July 2024, the City of Modesto put Debtor on notice of the significant transitory occupancy tax arrears, and the risk that the City would be revoking its City Transient Occupancy Registration Permit (“Permit”) for the operation of the hotel. After the appeal period expired, the City issued a letter on July 10, 2024 notifying

Debtor that its Permit had been revoked pursuant to Modesto Ordinance Section 8-2.609. Opp’n 2:11-19.

3. Operating the business in violation of the City’s Ordinance is not permitted under 28 U.S.C. § 959(c).
4. Poppy Bank will be moving to dismiss the case pursuant to 11 U.S.C. § 1112(b) for bad faith. Opp’n 3:3-9.

Poppy Bank filed a Supplemental Opposition and supporting Declarations on October 29, 2024. Dockets 41-45. Poppy Bank reiterates much of what was stated in the original Opposition, and states:

5. The City of Modesto has revoked Debtor in Possession’s permit to operate its hotel. Opp’n ¶ 1, Docket 41.
6. Debtor in Possession has no reasonable prospects of reorganization and has not equity in the leasehold interest. *Id.* at ¶¶ 2-3.
7. The case should be converted or dismissed to one under Chapter 7 for being a bad faith filing. *Id.* at ¶ 5.

Poppy Bank submits the Declaration of Dan Ryan in support at Docket 42. Mr. Ryan testifies that the loan Poppy Bank made to Debtor in Possession was conditioned on remodeling plans prepared by Complete Engineering Group, Inc. *Id.* at ¶ 5. Debtor in Possession violated the agreement by deviating from these remodeling plans, including by demolishing the entire lobby structure rather than renovate it. *Id.* at ¶ 8. Debtor in Possession failed to provide any information to Poppy Bank regarding its plans for deviating from the agreed upon renovation terms.

Poppy Bank also submits the Declaration of Lisa Mills in support of the Opposition. Decl., Docket 43. Ms. Mills testifies as to numerous defaults that occurred under the terms of the loan with Debtor in Possession. *Id.* at ¶ 6. Ms. Mills further testifies Debtor in Possession is currently in default for loan payments from June through October of 2024, Debtor in Possession has not paid real property taxes through October 2024, and the loan is currently in foreclosure. *Id.* at ¶¶ 10-12.

Poppy Bank also submits the Declaration of Deanna Christensen, the Director of finance and Tax Administrator for the City of Modesto, in support. Decl., Docket 44. Ms. Christensen testifies that Debtor in Possession is barred from operating any hotel in Modesto, effective July 10, 2024, through July 9, 2027. *Id.* at ¶ 5. Exhibit A to the Declaration is a copy of a letter from the City of Modesto dated July 10, 2024, stating that the Debtor’s Permit for Operation of the Modesto Hotel had been revoked, “effective immediately,” and that the operation of the Hotel must “cease immediately.” It further states that the Permit having been revoked, “MMC section 8-2.606(c)(3) prohibits the issuance of a Transient Occupancy Registration Permit to any individual or entity who has had such a permit revoked in the prior three years.” *Id.* at 6 of 46.

Poppy Bank also submits the Declaration of Mitchell Greenberg in support of the Opposition. Decl., Docket 45. Mr. Greenberg, Poppy Bank’s Counsel, authenticates the attached Exhibit which shows that Debtor in Possession’s principal, Mr. Mann, had received the Notice and Order from the City requiring Mr. Mann to fix the deficiencies in the Hotel and comply with the City’s ordinance. This document was

produced as part of the Deposition of Daljeet Sing Mann, an excerpt of which is included with the exhibit attached to the Declaration.

DISCUSSION

Poppy Bank and CMV oppose this Motion on the grounds that Debtor in Possession would be operating the business postpetition in violation of Modesto City's Ordinance. Such operation would not be permitted pursuant to 28 U.S.C. § 959(b). The evidence shows that Debtor in Possession is currently in violation of state law, and permitting the business to operate in violation of state law is not permitted.

At the hearing, **XXXXXXX**

The court has now been presented with evidence that the Debtor in Possession cannot operate the business for which it seeks to use the cash collateral. While the Debtor in Possession may want to argue, in the unlawful detainer action, whether the lease has been terminated, there does not appear to be any dispute that the Permit has been revoked. At the prior hearing, counsel for the Debtor in Possession made reference to this, and the court authorized the interim use of cash collateral to be presented with evidence of the revocation or that the Debtor in Possession was actively working with the City of Modesto to have the Permit promptly reinstated.

The Debtor in Possession not being able to operate the business, the Permit having been revoked, the request to use cash collateral premised upon the operation of such business is denied.

REVIEW OF THE MOTION

American Traders, Inc. ("Debtor in Possession") moves for an order approving the use of cash collateral. Debtor in Possession operates a hotel in Modesto, California, called the Modesto Hotel.

Debtor in Possession proposes to use cash collateral generated from its business operations in accordance with the proposed budget at Exhibit 1. Docket 17. The budget is a proposed month's budget. Over the month the total projected income is \$176,854, and the total expenses are projected to be \$175,344.63. *Id.* The budget accounts for general operating expenses of the business, including paying employees, rent, taxes, mortgage, other general costs of operating the business, and utilities.

The secured creditors asserting security interests in the cash collateral are as follows:

1. Poppy Bank, 2016;
2. Park Hospitality LLC, September 19, 2018;
3. Global Merchant Cash Advance, December 6, 2021;
4. TBS Financial, LLC, August 11, 2023;
5. The California Department of Tax and Fee Administration, January 4, 2024;
and

6. The Stanislaus County Tax Collector.

Mem. 2:10-17, Docket 16.

The court notes that there is no Declaration filed in support of this Motion, despite the Memorandum in support suggesting there is.

The major expense items stated on the proposed Budget are:

	Total Budget	\$176,854
Expense Item	Amount of Expense	Percentage of Total Budget
Electricity	(\$8,159)	4.61%
Gas	(\$2,099)	1.19%
Water	(\$6,043)	3.42%
Wages	(\$39,856)	22.54%
Payroll Taxes	(\$8,754)	4.95%
Insider Compensation - Simranjit Mann	(\$2,500)	1.41%
Insider Compensation - Daljeet Mann	(\$1,500)	0.85%
Franchise Fees	(\$13,459)	7.61%
Rent - Ground Lease	(\$35,073)	19.83%
Mortgage - Poppy Bank	(\$10,000)	5.65%

Though not stated in the Motion, the proposed Order filed as Exhibit 2, provides the following additional adequate protection and other terms upon which the use of cash collateral is conditioned:

- A. The Debtor in Possession [the proposed order says “Debtor,” but it is the debtor in possession, exercising the powers of a trustee as a fiduciary of the Bankruptcy Estate, that is operating the business and handing the monies of the Bankruptcy Estate] will not make any payments to insiders during the period of the emergency budget. Exhibit 1, Proposed order ¶ 4; Dckt. 17.
- B. As adequate protection for the use of cash collateral, creditors with claims secured by the cash collateral being used are granted replacement liens of the same type of post-petition assets and priority as in the pre-petition assets that secured their claims.

The Points and Authorities filed by the Debtor in Possession includes a Statement of Facts which state grounds that are to be set forth in the Motion.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1107, a debtor in possession serves as the trustee in the Chapter 11 case and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4). 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.

As cited by the opposing parties, 28 U.S.C. § 959 does not permit a Debtor in Possession to operate postpetition while violating local law. 28 U.S.C. § 959(b) states:

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in

which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

October 22, 2024 Hearing

At the hearing held on October 22, 2024, counsel for the Debtor in Possession and creditors addressed the pending unlawful detainer proceedings and the issue of whether the permit to operate the hotel had been terminated by the County. The Debtor in Possession reported having \$55,000.

At that hearing the court authorized the interim use of Cash Collateral as provided in the Budget filed as Exhibit 1 (Dckt. 17), subject to the following to payments:

- (1) payment for the 20 post petition days of rent to Central Valley Associates, the landlord, for October 2024, in the amount of \$23,208.00), on or before October 30, 2024; and
- (2) payment of \$10,000.00 to Poppy Bank on or before October 30, 2024, on its secured claim.

No payments are to be made to any insiders.

The hearing is continued to 10:30 a.m. on October 31, 2024, to consider supplemental pleadings to the 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 Authority to Use Cash Collateral filed by American Traders, 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 Motion is denied.

FINAL RULINGS

3. [17-90494-E-7](#)
[ICE-2](#)

DALJEET MANN
Pro Se

MOTION FOR COMPENSATION FOR
IRMA EDMONDS, CHAPTER 7
TRUSTEE(S)
9-25-24 [\[214\]](#)

Final Ruling: No appearance at the October 31, 2024 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 (*pro se*), creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on September 25, 2024. By the court's calculation, 36 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 Trustee 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 Trustee Fees is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Applicant") for the Estate of Daljeet Singh Mann ("Debtor"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 13, 2017 through the present.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

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

ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

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

(B) reimbursement for actual, necessary expenses.

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

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

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include performing her statutory Chapter 7 Trustee duties and recovering funds for creditors of the Estate. The Estate has \$145,000 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$4,750.00
<u>Total First and Final Fees Requested</u>	\$10,500.00

The fees are computed on the total sales generated \$145,000 of net monies (exclusive of these requested fees and costs).

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$107.70 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Checks		\$35.00
Postage		\$16.30
Copies		\$56.40
Total Costs Requested in Application		\$107.70

FEES & EXPENSES ALLOWED

Fees

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 \$10,500 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$107.70 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$145,000 of unencumbered monies to be administered that was recovered for the estate. Exhibit A, Docket 217.

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	\$10,500.00
Costs and Expenses	\$107.70

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 Irma Edmonds, 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 Irma Edmonds is allowed the following fees and expenses as trustee of the Estate:

Irma Edmonds, the Chapter 7 Trustee

Fees in the amount of \$10,500.00
Expenses in the amount of \$107.70,

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.