



**OPINION NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

In re:

CATHERINE TRINH,

Debtor.

Case No. 2:18-bk-11475-RK

Chapter 11

**MEMORANDUM DECISION ON  
APPLICATION FOR PAYMENT OF  
FINAL FEES AND/OR EXPENSES (11  
U.S.C. §330) OF LAW OFFICES OF  
PHILIP KAUFLE, APC, SPECIAL  
LITIGATION COUNSEL TO CATHERINE  
TRINH, DEBTOR IN POSSESSION**

Pending before the court is the Application for Payment of Final Fees and/or Expenses (11 U.S.C. §330) of Law Offices of Philip Kaufler, APC ("LOPK"), special litigation counsel to Catherine Trinh, Debtor in Possession, filed on March 30, 2021, Electronic Case Filing Number ("ECF") 567 (referred hereto as the "Fee Application"). The Fee Application is a first and final fee application seeking compensation and reimbursement of expenses totaling \$125,787.00 for legal services on behalf of the Debtor's bankruptcy estate for the four and one half (4½) month time period between February 9, 2018 and June 21, 2018. ECF 567 at 5 (internal page citation 2).

1 Subsequently, LOPK reduced the amount of fees and expenses requested in the Fee  
2 Application to \$102,345.84, which is computed as follows: \$122,947.50 in fees and  
3 \$1,864.50 in expenses voluntarily discounted by 18% based on an agreement with the  
4 Debtor as set forth in her declaration filed on June 1, 2021. Brief on the Issue of Joint and  
5 Several Liability Among Multiple Clients re: Application of Philip Kaufler for Attorney's Fees  
6 as Special Counsel for Debtor Cathy Trinh; Declaration of Philip Kaufler, ECF 690, filed on  
7 August 17, 2021, at 2-7; Declaration of Catherine Trinh, ECF 622, filed on June 1, 2021.

8 The Fee Application is a contested matter within the meaning of Federal Rule of  
9 Bankruptcy Procedure 9014 because the Creditor Second Generation, Inc. ("Creditor"),  
10 filed a written opposition to the Fee Application. ECF 571, filed on April 14, 2021.

11 The court has conducted several hearings on the Fee Application during which  
12 LOPK and Creditor had an opportunity to be heard, and for LOPK's principal, Attorney  
13 Philip Kaufler ("Kaufler"), to give testimony regarding the Fee Application. Both Creditor  
14 and the court had an opportunity to examine Kaufler regarding the Fee Application during  
15 evidentiary hearings on the Fee Application conducted on September 1, 2021 and October  
16 21, 2021.

17 In response to Creditor's opposition and the court's tentative rulings and inquiries  
18 regarding the Fee Application, LOPK filed additional pleadings addressing the opposition  
19 and the tentative rulings and inquiries.

20 Having considered the Fee Application, the opposition thereto, the other pleadings  
21 and papers filed by the parties, the witness testimony, the exhibits received at trial, and the  
22 record before the court, the court hereby sets forth the following findings of fact and  
23 conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, made  
24 applicable here by Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure,  
25 in support of its ruling to approve in part and disapprove in part the Fee Application.

**I. BACKGROUND**

On February 8, 2018, Debtor Catherine Trinh (“Debtor”) commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C., ECF 1. Debtor was assisted by another law firm, Fredman Liberman Pearl, LLP, as her general bankruptcy counsel in preparing Debtor’s bankruptcy petition and schedules.

On April 4, 2018, Debtor as the debtor-in-possession in this Chapter 11 bankruptcy case filed an application to employ LOPK to serve as special litigation counsel for the bankruptcy estate. ECF 45. The application of LOPK for employment as special litigation counsel sought the court’s authorization for it to represent the Debtor on behalf of the estate in a civil action in which she was one of the defendants before she commenced this Chapter 11 bankruptcy case, *Second Generation, Inc., v. Kody, et al.*, No. BC609405 (Superior Court of California, County of Los Angeles) (the “State Court Action”). *Id.* LOPK was counsel for her and the other defendants, Kody Brand, Inc., Seven-Bros Enterprises, Inc., Trinh Vuong Garment Co., Ltd., and Kody Branch of California, Inc., in the State Court Action. ECF 45 at 5-6. By order entered on May 25, 2018, the court approved the application of LOPK for employment as special litigation counsel to represent the Debtor on behalf of the estate in the State Court Action. ECF 84. The order approving LOPK’s employment was effective as of February 9, 2018. *Id.*

As recited in the Fee Application, the procedural history of the State Court Action is as follows. On February 5, 2016, Creditor Second Generation, Inc., commenced the State Court Action. ECF 567 at 5 (internal page citation 2). On October 19, 2017, three months before the petition date in this bankruptcy case, the trial court in the State Court Action granted summary adjudication against the Debtor, finding her liable as an alter ego of co-defendant Kody Branch, Inc. *Id.* According to LOPK, summary adjudication was entered only on the cause of action for breach of contract, and there were also numerous intentional torts alleged, including fraud. *Id.* at 6 (internal page citation 3). On December

1 13, 2017. LOPK substituted into the State Court Action as the attorney of record for the  
2 Debtor and the other defendants. *Id.* at 2 (internal page citation 5). On February 22, 2018,  
3 this bankruptcy court approved a stipulation between Debtor and Creditor Second  
4 Generation for relief from the automatic stay to permit the State Court Action to proceed to  
5 judgment. *Id.* at 5-6 (internal page citation 2-3), *citing*, ECF 18, filed and entered on  
6 February 22, 2018. On April 6, 2018, the California Court of Appeal affirmed the judgment  
7 in the State Court Action, and remittitur was issued on November 19, 2019. *Id.* at 6  
8 (internal page citation 3).

9 The time period for which LOPK seeks allowance of fees and expenses for legal  
10 services rendered to the bankruptcy estate is the four and one-half month period from  
11 February 9, 2018 to June 21, 2018 (the “Period”). According to LOPK, the amount of the  
12 fees and expenses requested are generally justified because:

13 During the Period, there were 11 hearings and the parties filed 243 pleadings  
14 in the State Court Action. The pleadings included thousands of documents  
15 comprising multiple motions, oppositions, replies, request for judicial notice, a  
16 massive amount of earlier filings referenced in the multiple motions, minute orders,  
a judgment and notice of appeal filed with the court.

17 ECF 567 at 5 (internal page citation 2).

18 The Fee Application organized the billing entries for the services rendered by LOPK  
19 into nine categories of work, plus a category for expenses and a tenth category of work  
20 was later added in the brief it filed on August 17, 2021. ECF 567 at 6-10 (internal page  
21 citation 3-7); ECF 690 at 5-26. The categories of work are denominated “A” through “J”,  
22 and the specific billing entries attributable to each category are listed in LOPK’s brief filed  
23 on August 17, 2021. *Id.* At the evidentiary hearings on the Fee Application, the court and  
24 the parties have discussed the fees and expenses claimed by LOPK by these categories  
25 based on LOPK’s brief filed on August 17, 2021.

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## II. JURISDICTION

The court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. § 1409(a). This is a contested matter within the meaning of Federal Rule of Bankruptcy Procedure 9014. This contested matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (b)(2)(B), and (b)(2)(O).

## III. DISCUSSION

### A. Standing

Under 11 U.S.C. § 1109(b), “[a] party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.” Creditor as a party in interest has standing to object to the Fee Application entitled to notice and to be heard on the Fee Application under 11 U.S.C. § 330(a) as a creditor of the bankruptcy estate under 11 U.S.C. § 101(10), holding an unsecured general claim of \$4,338,388.49 and a secured claim of \$25,000.00 against the estate. See Motion to Approve Compromise Between Plan Trustee and Second Generation, Inc., and Order thereon, ECF 726 and 750, filed on October 21, 2021 and November 18, 2021.

Under 11 U.S.C. § 330, the court also has an independent duty to review the applications of estate professionals such as LOPK, as special litigation counsel for Debtor in Possession, for reasonableness. “The bankruptcy court has a duty to review fee applications notwithstanding the absence of objections by the trustee, debtor, or creditors.” *In re Auto Parts Club, Inc.*, 211 B.R. 29, 33 (9th Cir. BAP 1997) (citing *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833, 841 (3d Cir. 1994)).

### B. Legal Standard

#### i. 11 U.S.C. § 330

Under 11 U.S.C. § 330(a)(1), a bankruptcy court is authorized to award “reasonable compensation for actual, necessary services rendered by . . . an attorney” and any

1 paraprofessional person employed by an attorney. The court also has the power to award  
2 a reduced fee to a professional requesting compensation under Section 330. 11 U.S.C. §  
3 330(a)(2).

4 In determining fees allowed to a professional of a bankruptcy estate, the court must  
5 examine “all relevant factors, including: (A) the time spent on [the] services; (B) the rates  
6 charged for [the] services; (C) whether the services were necessary to the administration  
7 of, or beneficial at the time at which the service was rendered toward the completion of [the  
8 case]; (D) whether the services were performed within a reasonable amount of time  
9 commensurate with the complexity, importance, and nature of the problem, issue, or task  
10 addressed; (E) with respect to a professional person, whether the person is board certified  
11 or otherwise has demonstrated skill and experience in the bankruptcy field; and  
12 (F) whether the compensation is reasonable based on the customary compensation  
13 charged by comparably skilled practitioners in [nonbankruptcy cases].” 11 U.S.C.  
14 § 330(a)(3). The court also must not allow compensation for (i) unnecessary duplication of  
15 services, or (ii) services that were not:

16 (I) Reasonably likely to benefit the debtor’s estate, or

17 (II) Necessary to the administration of the case.

18 11 U.S.C. § 330(a)(4)(A)(ii).

19 **ii. The Lodestar Method**

20 Courts customarily apply a formula known as the ‘lodestar’ method to complement  
21 these statutory factors, multiplying a reasonable number of hours expended by a  
22 reasonable hourly rate to determine allowable compensation. *Unsecured Creditors’*  
23 *Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 960 (9th Cir. 1991); *In re Manoa*  
24 *Finance Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988). In *Manoa Finance Company*, the  
25 Ninth Circuit held that a compensation award based on the lodestar method is  
26 “presumptively a reasonable fee.” 853 F.2d at 691. Although courts customarily begin a  
27 fee determination by applying the lodestar method—the “primary” fee calculation formula

1 adopted by the Ninth Circuit—the lodestar is not exclusively applied, given the “uniqueness  
2 of bankruptcy proceedings.” *Unsecured Creditors’ Committee v. Puget Sound Plywood,*  
3 *Inc.*, 924 F.2d at 960. Further, a court may downwardly adjust a law firm’s fees with  
4 reference to the work actually and reasonably performed, the value of that work to the  
5 estate, the performance of the firm’s attorneys, the reasonable hourly rates for such work,  
6 and the prevailing community rates, among other factors. *In re Morry Waksberg M.D., Inc.*,  
7 692 Fed. Appx. 840, 842 (9th Cir. June 6, 2017) (quoting *In re Manoa Finance Co., Inc.*,  
8 853 F.2d at 691).

9 When determining the amount of reasonable fees, the court’s  
10 examination . . . should include the following questions: First, were the services  
11 authorized? Second, were the services necessary or beneficial to the administration  
12 of the estate at the time they were rendered? Third, are the services adequately  
13 documented? Fourth, are the fees requested reasonable, taking into consideration  
14 the factors set forth in § 330(a)(3)? Finally, . . . the court must [also consider]  
15 whether the professional exercised reasonable billing judgment.

16 *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000) (citation omitted).

17 Regarding the requirement that bankruptcy estate professionals exercise billing  
18 judgment, the Ninth Circuit has stated that employment authorization does “not give [the  
19 professional] free reign to run up a tab without considering the maximum probable  
20 recovery.” *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc.*, 924 F.2d at  
21 958. Before undertaking work on a bankruptcy matter, a professional is obligated to  
22 consider:

23 (a) Is the burden of the probable cost of legal services disproportionately large in  
24 relation to the size of the estate and maximum probable recovery?

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

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

28 *Id.* at 959-960 (citation omitted). Moreover, “[w]hen a cost benefit analysis indicates that  
the only parties who will likely benefit from [a service] are the trustee and his  
professionals,’ the service is unwarranted and a court does not abuse its discretion in

1 denying fees for those services.” *In re Mednet*, 251 B.R. at 108-109 (quoting *In re*  
2 *Riverside-Linden Investment Co.*, 925 F.2d 320, 321 (9th Cir. 1991)).

3 A bankruptcy court has broad discretion to determine the number of hours  
4 reasonably expended by a professional. *Wechsler v. Macke International Trade, Inc.* (*In re*  
5 *Macke International Trade, Inc.*), 370 B.R. 236, 254 (9th Cir. BAP 2007). “[E]ven where  
6 evidence supports [that] a particular number of hours [were] worked, the court may give  
7 credit for fewer hours if the time claimed is ‘excessive, redundant, or otherwise  
8 unnecessary.’” *Id.* (quoting *Dawson v. Washington Mutual Bank, F.A.* (*In re Dawson*), 390  
9 F.3d 1139, 1152 (9th Cir. 2004)).

10 While “the applicant must demonstrate only that the services were ‘reasonably likely’  
11 to benefit the estate at the time the services were rendered,” *In re Mednet*, 251 B.R. at  
12 108, “an attorney fee application in bankruptcy will be denied to the extent that the services  
13 rendered were for the benefit of the debtor and did not benefit the estate.” *In re Crown Oil,*  
14 *Inc.*, 257 B.R. 531, 540 (Bankr. D. Mont. 2000) (quoting *Keate v. Miller (In re Kohl)*, 95 F.3d  
15 713 (8th Cir. 1996)) (citations and internal quotation marks omitted). “This rule is based on  
16 the legislative history of the Bankruptcy Code section 330(a) and the unfairness of allowing  
17 the debtor to deplete the estate by pursuing its interests to the detriment of creditors.” *Id.*  
18 (citations and internal quotation marks omitted). “The same unfairness occurs when a  
19 debtor’s professionals seek to deplete the estate . . . to the detriment of the estate and  
20 creditors.” *In re Crown Oil, Inc.*, 257 B.R. at 540.

21 Nevertheless, the court in *Crown Oil* observed:

22 . . . [Courts] do not conclude that only successful actions may be compensated  
23 under § 330. To the contrary, so long as there was a reasonable chance of success  
24 which outweighed the cost in pursuing the action, the fees relating thereto are  
25 compensable. Moreover, professionals must often perform significant work in  
26 making the determination whether a particular course of action could be successful.  
Such services are also compensable so long as, at the outset, it was not clear that  
success was remote.



1 *In re Crown Oil, Inc.*, 257 B.R. at 541 (quoting *In re Jefsaba, Inc.*, 172 B.R. 786, 789  
2 (Bankr. E.D. Pa. 1994)) (internal quotation marks omitted). That is, as the court in *Crown*  
3 *Oil* further observed:

4           One bankruptcy court writes: “The Court does not expect the attorney to  
5           succeed in every endeavor he undertakes on behalf of the client. But the endeavor  
6           for which the estate is expected to pay must be reasonably calculated to produce a  
7           benefit to the estate.”

8 *In re Crown Oil, Inc.*, 257 B.R. at 241 (quoting *In re Hunt*, 124 B.R. 263, 267 (Bankr. S.D.  
9 Ohio 1990).

10           The court has reviewed the Fee Application of LOPK, including all billing entries,  
11 pursuant to 11 U.S.C. § 330 and the lodestar method. The court identified specific tasks  
12 performed by LOPK and its professionals which were objected to by Creditor or otherwise  
13 potentially problematic based on the court’s independent duty to review the  
14 reasonableness of the time billed and tasks performed. As discussed herein, the court  
15 determines that not all the of the requested fees are reasonable, and the court has reduced  
16 the award by disallowing the fees that are not reasonable. The court has determined that  
17 some of Creditor’s objections to the requested fees have merit, but other objections lacked  
18 merit. The court has also determined that other requested fees are not reasonable  
19 pursuant to its independent duty to review the fees.

20 **C. Application**

21           On the original Fee Application, LOPK requested \$123,922.50 in professional fees  
22 and \$1,864.50 in expenses. ECF 567. Subsequently, LOPK recomputed the amount of  
23 fees and expenses requested in Fee Application to \$124,812.00, consisting of \$122,947.50  
24 in fees and \$1,864.50 in expenses, and reduced this recomputed amount by 18% to  
25 \$102,345.84 based on an agreement with the Debtor, which is now the amount requested  
26 by LOPK in its application. ECF 690, filed on August 17, 2021.

27           Pursuant to the court’s request, LOPK provided the court with a breakdown of its  
28 final billing entries by category in its August 17, 2021 brief, so that the court and the parties

1 could review the fees by looking at each billing entry assigned to a specific fee category at  
2 the evidentiary hearings in order for the court to make rulings on each individual billing  
3 entry and each objection. The court has used the breakdown by category to make its  
4 rulings thereon.

5 **i. Creditor's Objections**

6 On April 14, 2021, Creditor filed its Opposition to Special Litigation Counsel's  
7 Application for Payment of Final Fees and Expenses. ECF 571. Creditor argued that that  
8 the Fee Application should be denied because it fails to satisfy and establish the statutory  
9 and legal requirements to receive compensation from the bankruptcy estate, specifically,  
10 Creditor argued that LOPK was requesting excessive and unreasonable compensation for  
11 the services rendered, including for prepetition services, that is, LOBK was billing  
12 excessively and unreasonably for tasks when considering the complexity, time comparably  
13 charged, and the nature of the issues addressed by the Applicant, 11 U.S.C. § 330(a)(3),  
14 and that the services rendered by the Applicant were not reasonably likely to benefit the  
15 Debtor's estate or were not necessary to the administration of the bankruptcy case, 11  
16 U.S.C. § 330(a)(4)(A)(ii).

17 Creditor contended that "the Application is wholly deficient and it requests  
18 compensation that is plainly excessive and unreasonable for the services rendered  
19 because most of the legal services were not reasonably likely to benefit the Debtor's estate  
20 and the services were not necessary to the administration of the case." Opposition, ECF  
21 571 at 8. Creditor further urged:

22 The Court should deny the Application and disallow the fees as requested; however,  
23 to the extent that the Court is inclined to allow some reduced fee amount, any  
24 amount deemed reasonable and necessary by this Court should be reduced by at  
25 least 80% because the Debtor was only one of five entities the Applicant was  
26 representing in connection with the services rendered in the state court action. The  
27 Applicant fails to explain how or why all services rendered and billed in the  
28 Application should be charged as compensation exclusively to the Debtor's estate,  
especially when some of the fees requested and services rendered were only  
performed to benefit the representation of other judgment debtors or proposed

1 additional judgment debtors. Thus, the fees requested should be disallowed, but at  
2 minimum, any amount to be allowed must be reduced by the proportion of  
representation that actually benefitted the Debtor and her estate.

3 *Id.* In other words, in Creditor's view, since LOPK was representing other clients beside  
4 Debtor in the representation in the State Court Action, LOPK should be only allowed a  
5 proportionate share of its fees charged to all of its clients on the representation relating to  
6 the Debtor only, that is, Debtor was one of five clients, and the fees charged to her  
7 bankruptcy estate should only be one-fifth.

8 On August 21, 2021, Creditor filed a Supplemental Brief in Support of Opposition  
9 ("Supplemental Opposition") addressing its specific objection that LOPK was representing  
10 multiple parties in the representation in the State Court Action and failed to allocate the  
11 fees among the various clients in seeking the entirety of the fees against the Debtor, only  
12 one of five represented clients. ECF 692. Creditor asserted in its Supplemental  
13 Opposition as follows:

14 Here, it is undisputed that the Applicant is requesting all fees incurred from  
15 representing multiple entities solely to be paid by the Debtor's estate—this is  
16 fundamentally an unnecessary duplication of services. Additionally, despite  
17 an opportunity in the Application and the Reply, the Applicant has failed to  
18 explain how all of the Applicant's fees were reasonably likely to benefit the  
19 Debtor's estate or how they were necessary to the administration of the case.  
If the Applicant cannot satisfy his burden in demonstrating the benefit and  
necessity of his services, then the Court must deny the requested fees. §  
330(a)(4)(A).

20 Supplemental Opposition, ECF 692 at 7.

21 **ii. LOPK's Defense of the Fee Application**

22 On April 21, 2021, LOPK filed its Reply to Creditor's Opposition to its Fee  
23 Application (the "Reply"). ECF 574. The Reply essentially argued that all of the services  
24 performed by LOPK were necessary to protect the Debtor and that even if she had been  
25 the only defendant in the State Court Action, all of the services performed for which the  
26 fees are being requested would have been absolutely necessary, and that the fees satisfy  
27 the legal standard under 11 U.S.C. § 330 as reasonable compensation for actual,  
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1 necessary services rendered by the professional employed by the estate. *Id.* at 14-15  
2 (internal page citation 10-11).

3 On August 17, 2021, LOPK filed its Brief on Issue of Joint and Several Liability  
4 Among Multiple Clients, which addressed the issue of whether fees should be allocated  
5 among the multiple clients in the representation in the State Court Action as argued by the  
6 Creditor. ECF 690. This brief argued in opposition to Creditor's argument that the fees  
7 should prorated among multiple clients, stating that LOPK's five clients, including the  
8 Debtor, are jointly and severally liable because they signed a single attorney retainer  
9 agreement making them jointly and severally liable for fees under the contract. *Id.* at 3-4.  
10 LOPK argued:

11 In California there is statutory and case law that makes it clear that when  
12 there are several promisors on a contract they are jointly and severally liable on the  
13 contract. The California Supreme Court in *DKN Holdings LLC v. Faerber* (2015) 61  
Cal.4th 813 states this principle in clear and unequivocal terms:

14 "A joint and several contract is considered to be a contract that is made both  
15 separately with each promisor and jointly with all the promisors. (12 Williston  
16 on Contracts (4th ed. 2012) § 36:1, pp. 801–802.) Parties to a joint and  
17 several contract are thus bound jointly, so that they are liable for the entire  
obligation, and severally, so that each may be sued separately for the entire  
loss. (See *id.*, § 36:1, p. 803.) . . .

18 To this end, Civil Code section 1659 provides, "Where all the parties who  
19 unite in a promise receive some benefit from the consideration, whether past  
20 or present, their promise is presumed to be joint and several." Similarly, Civil  
21 Code section 1660 states, "A promise, made in the singular number, but  
executed by several persons, is presumed to be joint and several."

22 *DKN Holdings supra*, at pages 820–821

23 Here, Kaufler's five clients executed a single attorney retainer agreement to  
24 represent them in the State Court Action. In accordance with Civil Code § 1659 and  
25 the California Supreme Court in *DKN Holdings*, *supra*, all five are jointly and  
26 severally liable for all of the fees, including the Debtor. If the court requires the  
signed retainer agreement to be provided, it will be provided for in-camera  
inspection at the time of the hearing.

27 ECF 690 at 3.

1 **iii. The Court's Determinations**

2 On August 30, 2021, the court issued its tentative ruling on the Fee Application,  
3 which was posted on the court's website before the hearing on September 1, 2021. The  
4 tentative ruling stated as follows:

5 Updated tentative ruling as of 8/30/21. (1) Regarding applicant's claim that debtor  
6 is jointly and severally liable for attorneys' fees and costs in representation of  
7 multiple parties in the state court litigation represented by applicant as special  
8 litigation counsel, applicant will need to submit in camera a copy of the retainer  
9 agreement to substantiate debtor's joint and several liability. See California Civil  
10 Code sections 1659 and 1660; *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813  
11 (2015). Applicant needs to contact Mary Bakchellian, Judge Kwan's courtroom  
12 deputy clerk, to email a copy of the retainer agreement for in camera review. (2)  
13 Regarding the fee category of review of file and bankruptcy issues, objecting party  
14 Second Generation objects to fees for 26.2 hours totaling \$17,030 for reviewing  
15 pleadings and preparing summaries contending that such work is duplicative of work  
16 performed before the bankruptcy employment date of 2/9/18, in order for the court to  
17 evaluate the objection, applicant will need to submit his complete billing statements  
18 for the engagement representing debtor and the other clients before the bankruptcy  
19 employment date of 2/9/18. Second Generation provided copies of redacted billing  
20 statements from applicant, but they are incomplete. (3) In this category, there is 0.1  
21 hour for preparing an email to Tony Trinh regarding bankruptcy issue which appears  
22 to be work for another client, not debtor. (4) Disallow 2.2 hours for reviewing  
23 adversary proceeding of Voong v. Trinh since debtor is represented by other  
24 counsel and such work is duplicative of other employed counsel. (5) Regarding  
25 employment, disallow 1.0 hour as 4.9 hours for review of employment application  
26 prepared by other employed counsel is excessive time. (6) Regarding motion to  
27 dismiss, disallow 0.5 hour as 1.2 hours for review of stipulation to dismiss prepared  
28 by opposing counsel excessive time as stipulation was simple. (7) Regarding motion  
for prejudgment interest, 7.8 hours is billed for review of purchase orders at partner  
rate which work is a paralegal function, and reduce hours to 4.0 hours because  
excessive and reduce rate to paralegal rate of \$200/hour. *In re Long Dei Liu*, No.  
8:19-cv-001341-JLS, 2020 WL 5543041 (C.D. Cal. Sept. 14, 2020) at \*11, citing, *In  
re Music Merchants, Inc.*, 208 B.R. 944, 948 (9th Cir. BAP 1997). (8) Also regarding  
motion for prejudgment interest, disallow 6.2 hours for work preparing declarations  
as papers do not show that declarations were filed. (9) Applicant will need to  
explain why the fees for opposing Second Generation's writ of attachment are  
compensable as actual, necessary services benefiting the estate because the writ of  
attachment sought did not involve the debtor, but other nondebtor parties, that is,  
Second Generation sought a writ of attachment as to parties other than the debtor in  
this case. Applicant's argument in the application (Memorandum of Points and  
Authorities at 7) that it was important to oppose the writ of attachment because  
Second Generation was using this device in an attempt to obtain secured claims in  
the bankruptcy proceeding lacks merit because debtor was not a subject of the

1 motion for writ of attachment. It appears that such services did not benefit the  
2 estate as argued by Second Generation as benefitting other parties and should be  
3 disallowed. *In re B.E.S. Concrete Products, Inc.*, 93 B.R. 228, 234 (Bankr. E.D. Cal.  
4 1988); *In re Long Dei Liu*, No. 8:19-cv-001341-JLS, 2020 WL 5543041 at \*11-12.  
5 (10) Applicant will need to explain why the fees for opposing Second Generation's  
6 motion to add additional judgment debtors are compensable as actual, necessary  
7 services benefiting the estate because the judgment debtors to be added did not  
8 involve the debtor, but other nondebtor parties, that is, Second Generation sought to  
9 add additional judgment debtors who were not the debtor in this case. Applicant's  
10 argument in the application (Memorandum of Points and Authorities at 7) that he  
11 was required to coordinate with other counsel brought in to defend the additional  
12 judgment debtors to bring them up to speed on the ongoing litigation lacks merit  
13 because the motion involved parties other than the debtor and their counsel could  
14 get up to speed themselves. It appears that such services did not benefit the estate  
15 as argued by Second Generation as benefitting other parties and should be  
16 disallowed. *In re B.E.S. Concrete Products, Inc.*, *supra*; *In re Long Dei Liu*, *supra*.  
17 (11) Regarding the work on the notice of appeal, there are no filed papers, and the  
18 application is unclear what the possible notice of appeal related to, that is, there is  
19 no explanation in the application was the final order involving the debtor to be  
20 appealed and the basis for the possible appeal.

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28  
Appearances are required on 9/1/21, but counsel and self-represented parties must  
appear through Zoom for Government in accordance with the court's remote  
appearance instructions.

The court placed the August 30, 2021 tentative ruling on the case docket on October 27,  
2021. ECF 737.

The parties had the opportunity to respond to the court's tentative ruling at the  
evidentiary hearings on September 1, 2021 and October 21, 2021.

Having considered the Fee Application, the evidence in support and in opposition  
thereof, and the written and oral arguments of the parties, the court now sets forth its  
rulings on the Fee Application. In this regard, the court observes that the Fee Application  
lists categories for fees for the various services that were rendered by LOPK in this case,  
and it is useful to consider the fee categories first.<sup>1</sup>

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<sup>1</sup> In its Exhibit A to LOPK's August 17, 2021 brief, ECF 690, LOPK categorized its fees as follows:

- A: Review of File and Bankruptcy Issues
- B: BK Employment
- C: Motion to Dismiss
- D: Opposition to Sec Gen's Motion for Fees
- E: Motion for Pre-Judgment Interest

(continued)

1 The court has reviewed all of the fees for reasonableness pursuant to 11 U.S.C. §  
2 330 and has considered the Creditor's objections and LOPK's responses thereto.  
3 Because the court considers the lodestar analysis in reviewing the fees requested here,  
4 the court determines that the amount of time spent on the case by LOPK was not entirely  
5 reasonable, and thus, the fees are excessive to some degree.

6 Under the lodestar method, the court determines that LOPK's billing rates were  
7 reasonable and appropriate based on the services rendered and the fees typically charged  
8 in civil litigation practice before the state courts in this federal judicial district. LOPK's  
9 principal, Kaufler, testified that his usual billing rate is \$650.00 per hour, which the court  
10 finds in light of his experience as a litigation practitioner is reasonable.

11 As previously noted, Creditor objects to LOPK's requested fees because it was  
12 representing multiple clients when it was representing the Debtor on behalf of the estate  
13 and that the estate should only bear an allocated share of the fees incurred, arguing:

14 The Court should deny the Application and disallow the fees as requested; however,  
15 to the extent that the Court is inclined to allow some reduced fee amount, any  
16 amount deemed reasonable and necessary by this Court should be reduced by at  
17 least 80% because the Debtor was only one of five entities the Applicant was  
18 representing in connection with the services rendered in the state court action. The  
19 Applicant fails to explain how or why all services rendered and billed in the  
20 Application should be charged as compensation exclusively to the Debtor's estate,  
21 especially when some of the fees requested and services rendered were only  
22 performed to benefit the representation of other judgment debtors or proposed  
23 additional judgment debtors. Thus, the fees requested should be disallowed, but at  
24 minimum, any amount to be allowed must be reduced by the proportion of  
25 representation that actually benefitted the Debtor and her estate.

26 Opposition, ECF 571 at 8.

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- 27 - F: Ex Parte Attachment
  - 28 - G: Writ of Attachment
  - H: Motion to Add Potential Judgment Debtors
  - I: Appeal
  - J: Motion for Reconsideration

1 In response to this specific objection, LOPK in its reply argued:

2 All of the legal work performed by Kaufler was necessary to protect Cathy  
3 Trinh from the all out aggression of Second Generation. Even if she were the only  
4 defendant in the State Court Action all of the work that is the subject of this motion  
5 would have been absolutely necessary. Moreover, Cathy Trinh, among the other  
6 four defendants has the deepest pockets. Second Generation relentlessly pursued  
7 Cathy Trinh in the State Court Action. Kody, the contracting party with Second  
8 Generation was put out of business by Second Generation as were the other  
9 original defendants. Cathy Trinh has always been the target and she continues to be  
10 the target in the current bankruptcy proceedings.

11 The other party defendants in the State Court Action were Kody, and Trinh  
12 Vuong Garment, a Vietnamese business entity ("TVG"). During the time Kaufler  
13 commenced his representation of Cathy Trinh there was very little, if any, litigation  
14 directed against TVG or Kody. The litigation battle at that point was almost entirely  
15 directed against Cathy Trinh. Both TVG and Kody were put out of business and had  
16 no assets or income. Cathy Trinh was the only party with assets or income. Second  
17 Generation has been pursuing her, without let up from the time Kaufler began  
18 representing Cathy Trinh.

19 Second Generation has been awarded approximately \$750,000 in attorneys  
20 fees, most of which was directed at Cathy Trinh. Kaufler's fees, which they now  
21 complain about is only one-sixth of Second Generation's fees. (See RJN No. 11) It  
22 was also Kaufler against several law firms at once. Second Generation should not  
23 complain about Kaufler's fees because it was their constant and aggressive litigation  
24 that caused an escalation of fees. Second Generation's basic argument to this Court  
25 is that Kaufler should have laid down and let its lawyers beat down Cathy Trinh.

26 \*\*\*

27 Kaufler was employed by the trustee and per order of this Court to represent  
28 the debtor in very aggressive and hard fought civil litigation in the matter of Second  
Generation v. Kody, et, Case Number BC609405 from February 2, 2018 petition  
date date ("Petition Date") up to June 21, 2018.

Section 330 of the Bankruptcy Code authorizes the Court to award to a  
professional employed under 11 U.S.C. § 327 reasonable compensation for actual,  
necessary services rendered by the professional person employed by the estate  
and for reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1)(A) &  
(B). Kaufler's services rendered to and incurred for Debtor during the time period  
covered by this Application were actual and necessary and compensation therefor is  
reasonable based upon the time, nature, extent and value of the services.  
Accordingly, Kaufler's fees and expenses should be allowed on a final basis in full.

ECF 574 at 14-15 (internal page citation 10-11).



1 In this regard, the court disagrees with the Creditor that the fees should be reduced  
2 by 80% because the Debtor was only one of five clients being represented by LOPK  
3 because that is not the legal standard under 11 U.S.C. § 330 for determining the  
4 reasonableness of fees for services rendered by estate professionals as the court  
5 discussed above, which is the standard that the court will apply in this matter. The court  
6 evaluates the fees based on the reasonableness standard of 11 U.S.C. § 330 and  
7 considers whether the services were reasonable, necessary and beneficial to the estate,  
8 and not whether they should be discounted to the extent that because they also benefitted  
9 other represented parties. The legal authority cited in its written oppositions to support its  
10 proration objection, *Leichty v. United States Trustee (In re Strand)*, 375 F.3d 854, 860 (9th  
11 Cir. 2004); *In re Long Dei Liu*, No. 8:19-cv131-JLS, 2020 WL 5543041, at \*8 (C.D. Cal.  
12 Sept. 14, 2020), do not support the objection because those cases held that the services  
13 performed by an estate professional that also assisted parties was not compensable  
14 because such services were not shown to have benefitted the estate, that is, the services  
15 benefitted other parties rather than the estate. See Supplemental Opposition, ECF 692 at  
16 10 (citing these cases). Those cases are not directly on point because they did not involve  
17 services that benefitted the estate as well as other parties.

18 Furthermore, as LOPK argues, the fees may not be prorated among the multiple  
19 clients it represented in the State Court Action, Debtor has joint and several liability under  
20 state contract law because she signed the single attorney retainer fee contract, making her  
21 jointly and severally liable for the fees under the contract. ECF 690 at 3-4 (citing California  
22 Civil Code 1659 and *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813 (2015)). However,  
23 having said this, the court states that whatever liability the Debtor may have personally for  
24 the fees charged by LOPK in the engagement under state law does not guide the court in  
25 determining whether the fees are compensable under federal law pursuant to 11 U.S.C. §  
26 330 based on the estate's liability, which is a different analysis. That is, the Debtor's joint  
27  
28

1 and several liability under state law is not a factor on whether the fees in this matter are  
2 compensable under 11 U.S.C. § 330.

3       The issue raised by Creditor and the court in their objections was the use of higher  
4 cost professionals on tasks which should have been performed by lower cost  
5 professionals. According to Kaufler, he is a sole practitioner and had to do the work  
6 normally performed by lower cost nonattorney professionals because he did not have lower  
7 cost personnel at his firm and had to perform the work at his \$650.00 per hour billing rate.  
8 As discussed below, the issue is not so much Mr. Kaufler's rate per se, but his billing of  
9 services for clerical tasks that he performed, such as review of, and preparing arithmetic  
10 computations of prejudgment interest on purchase order amounts, which did not require an  
11 attorney to perform and should not have been billed at attorney rates. See Memorandum  
12 Decision Granting in Part Request for Allowance and Payment of Administrative Claim by  
13 the Bankruptcy Law Firm, P.C., *In re Morry Waksberg M.D., Inc.*, No. 2:06-bk-16101-BB  
14 Chapter 7, slip op. at 16-18 (Bankr. C.D. Cal., filed and entered on April 20, 2015), *affirmed*  
15 *in relevant part sub nom. The Bankruptcy Law Firm, P.C. v. Siegel (In re Morry Waksberg*  
16 *M.D., Inc.)*, BAP No. CC-15-1109 TaKuKi, 2015 WL 9437343, slip op. at \*7 and n. 7 (9th  
17 Cir. BAP, unpublished opinion filed on December 22, 2015), *affirmed in relevant part and*  
18 *reversed and remanded on other grounds*, 692 Fed. Appx. 840, 841-842 (9th Cir. 2017)  
19 (unpublished opinion).

20       The court addresses the reasonableness of the time spent on individual tasks  
21 pursuant to the lodestar method below and in its individual rulings. Accordingly, the court  
22 discusses the reasonableness under the lodestar method of the fees billed by LOPK for  
23 services relating to representation of the estate in the State Court Action against the  
24 Debtor and other defendants.

25       **Fees for Review of File and Bankruptcy Issues**

26       Originally, LOPK in the Fee Application requested fees of \$17,030.00 for 26.2 hours  
27 of work at Kaufler's hourly rate of \$650.00 for the category: "A. Review of File." ECF 567

1 at 6-7 (internal page citation 3-4). The stated justification for these fees in the Fee  
2 Application was:

3           When Kaufler became attorney of record in the State Court Action on  
4 December 13, 2017 there was a substantial litigation and evidence file that required  
5 extensive review, particularly when certain motions had to be opposed and affirmative  
6 motions had to be filed. There were many thousands of pages of documents  
7 consisting of pleadings, motions, oppositions, replies, extensive discovery, including  
8 written discovery and deposition transcripts. There were also boxes of corporate and  
9 financial records that had to be reviewed. Compromising this task of getting up to  
10 speed was the fact that former counsel for Cathy Trinh did not have an organized file  
11 to transfer to Kaufler once he became attorney of record. More than that, the former  
12 lawyer committed numerous acts of malpractice which ultimately led to a judgment  
13 against him in a separate action.

14           Of course, a careful review of the pleadings and other documents was  
15 completely necessary in order to mitigate the terrible consequences facing the debtor.  
16 By the time Kaufler became attorney of record summary adjudication had just been  
17 granted against the debtor and there were pending motions for attorneys fees,  
18 prejudgment interest and applications for writ of attachment.

19           On top of this deep hole, there still remained four cause of action for various  
20 torts including fraud and interference with contract. Those remaining causes of action  
21 were heading to trial at the time Kaufler took over.

22 ECF 567 at 6-7 (internal page citation 3-4). The requested fees for this category of work  
23 were increased to \$26,357.50 for 40.55 hours of work because some of the billing entries  
24 in other categories in the Fee Application were shifted to this category, and the fee  
25 category was renamed: "A. Review of File and Bankruptcy Issues." ECF 690 at 5-26.

26           Creditor objected to the fees for this category as excessive and unreasonable as  
27 follows:

28           The Applicant bills excessively and unreasonably for tasks when considering  
the complexity, time comparably charged, and the nature of the issues addressed by  
the Applicant. 11 U.S.C. § 330(a)(3).

          The Applicant also seeks excessive compensation for "review of file," which  
totals 26.2 hours at \$17,030.00. (Fee App. at 3:10-27). The effective date of the  
Applicant's employment by the estate is February 9, 2018. (Docket No. 84). However,  
as stated by the Applicant in supporting these requested fees: "When Kaufler became  
attorney of record in the State Court Action on December 13, 2017 there was a  
substantial litigation and evidence file that required extensive review, particularly

1 when certain motions had to be opposed and affirmative motions had to be filed.”  
2 (Fee App. at 3:11-14). And in fact, the Applicant’s first motion filed in the state court  
3 action was on January 10, 2018—a month before the Applicant’s employment  
4 effective date. (Weisberg Decl. at ¶5). It is highly unlikely that the Applicant would still  
5 be reviewing the Debtor’s “substantial litigation and evidence file” for the state court  
6 action after February 9, 2018 when the Applicant was attorney of record since  
7 December 13, 2017 and after filing a motions in the state court action. The  
8 Applicant’s position appears to lack good faith and curiously, in reviewing the billing  
9 entries, the Applicant bills for 13.7 hours between February 9 and 11, 2018 for review  
10 of pleadings and preparation of summaries, which do not appear to have been  
11 recorded contemporaneously. (See Fee App. at p.25 of 45, Exhibit B). Since the  
12 Applicant appears to seek payment for services rendered prepetition and prior to his  
13 employment by the estate, the Court should deny the excessive and unreasonable  
14 fees of \$17,030 to review the Debtor’s file. § 330(a)(1)(A).

15 Opposition, ECF 571 at 2.

16 LOPK in its Reply to Creditor’s Opposition stated as follows:

17 Second Generation also claims that 26.2 hours for review of the underlying  
18 file is excessive. The underlying file consists of many thousands of pleadings,  
19 exhibits, and documentary evidence. Second Generation argues that the review  
20 should have all been completed prior to appointment of Kaufler by this Court. But  
21 the review was ongoing depending on the pending tasks that had to be addressed.  
22 In the time frame of this employment as special counsel there were extensive  
23 pleadings that had to be analyzed to properly prepare a defense. There was  
24 extensive motions for attorney’s fees, prejudgment interest, applications for writs of  
25 attachments, review for preparation of a motion to dismiss the four remaining tort  
26 claims, and a review of the judgment, among many other pleadings. And special  
27 counsel also had to deal with post judgment motions to add additional judgment  
28 debtors and preparing new counsel for the potential judgment debtors regarding the  
claims being asserted by Second Generation.

ECF 574 at 8.

Regarding this fee category, the court’s August 30, 2021 tentative ruling addressed  
three specific matters as follows:

(2) Regarding the fee category of review of file and bankruptcy issues, objecting  
party Second Generation objects to fees for 26.2 hours totaling \$17,030 for  
reviewing pleadings and preparing summaries contending that such work is  
duplicative of work performed before the bankruptcy employment date of 2/9/18, in  
order for the court to evaluate the objection, applicant will need to submit his  
complete billing statements for the engagement representing debtor and the other  
clients before the bankruptcy employment date of 2/9/18. Second Generation  
provided copies of redacted billing statements from applicant, but they are  
incomplete. (3) In this category, there is 0.1 hour for preparing an email to Tony

1 Trinh regarding bankruptcy issue which appears to be work for another client, not  
2 debtor. (4) Disallow 2.2 hours for reviewing adversary proceeding of Voong v. Trinh  
since debtor is represented by other counsel and such work is duplicative of other  
employed counsel.

3 ECF 737 at 2.

4 Regarding item number (2), LOPK submitted its complete billing statements for the  
5 engagement representing the Debtor and the other clients before the date of employment  
6 on February 9, 2018, which the court has now reviewed. The court determines that the  
7 objection of the Creditor that the work reviewing the file was duplicative of work performed  
8 before the employment effective date of February 9, 2018 not to be the case. The work  
9 performed for the Debtor and the other clients before February 9, 2018 was different from  
10 the work performed after that date to review the files, and based on the court's review, the  
11 work to review the files to represent the Debtor in this case after February 9, 2018 was  
12 reasonable and necessary, and thus, compensable under 11 U.S.C. § 330. However, this  
13 ruling is subject to two exceptions which were the other items in the tentative ruling on this  
14 fee category: "(3) In this category, there is 0.1 hour for preparing an email to Tony Trinh  
15 regarding bankruptcy issue which appears to be work for another client, not debtor. (4)  
16 Disallow 2.2 hours for reviewing adversary proceeding of Voong v. Trinh since debtor is  
17 represented by other counsel and such work is duplicative of other employed counsel."  
18 ECF 737 at 2. *See In re B.E.S. Concrete Prods., Inc.*, 93 B.R. 228, 234 (Bankr. E.D. Cal.  
19 1988) ("There is no allocation of the bill among the various clients. Some services were  
20 rendered for the ultimate benefit of persons other than the debtor. *Since it is impossible to*  
21 *determine on this record what portion, if any, of the fees and expenses are properly*  
22 *attributable to the debtor, the request should be denied for that reason alone.*") (emphasis  
23 added) and *In re Hunt*, 588 B.R. 496, 499-501 (Bankr. W.D. Mich. 2018) (finding that  
24 debtor's counsel who sought compensation for assisting non-debtor individuals and entities  
25 was not compensable by the bankruptcy estate under § 330(a)(4)) (cited and quoted in  
26 Supplemental Opposition, ECF 692 at 9). At the evidentiary hearing on September 1,  
27

2021, Kaufler on behalf of LOPK stated that it did not contest the court's tentative ruling on these items. The court thus disallows fees represents 2.3 hours in this category on grounds that the work was performed for other clients and not the Debtor, and thus, was not compensable as necessary and beneficial to the estate. The court will allow the remaining fees in this fee category representing 23.9 hours at Kaufler's billing rate of \$650.00 per hour, or \$15,535.00.

**Fees Requested for BK Employment**

Originally, LOPK in the Fee Application requested fees of \$8,222.50 for 12.65 hours of work at Kaufler's hourly rate of \$650.00 for the category: "B. Kaufler Bankruptcy Employment Application." ECF 567 at 6-7 (internal page citation 3-4). The stated justification for these fees in the Fee Application was: "In order to represent the debtor in the State Court Action, Kaufler was required to prepare and file applications for an order authorizing employment. This was necessary so that Kaufler had the requisite order from the bankruptcy court to proceed on behalf of the Debtor." ECF 567 at 7 (internal page citation 4). The requested fees for this category of work was reduced to \$3,055.00 for 4.7 hours of work because some of the billing entries in this category in the Fee Application were shifted to another category, and the category was renamed: "B. BK Employment." ECF 690 at 5-26.

Creditor stated its objection to the fees for this category as excessive and unreasonable as follows:

The Applicant bills excessively and unreasonably for tasks when considering the complexity, time comparably charged, and the nature of the issues addressed by the Applicant. 11 U.S.C. § 330(a)(3).

As mentioned above, the Applicant charges the estate \$8,222.50 for 12.65 hours to prepare and file its employment application in the bankruptcy case. (Fee App. at 4:4-9). Not only are these fees plainly unreasonable considering the nature and complexity of employment applications, but the Applicant's employment application appears to particularly brief—in that it is less than 4 pages—and it appears to have been prepared and filed by Debtor's general bankruptcy counsel, not the

1 Applicant. (See Docket No. 45). The fees charged for the preparation and filing of the  
employment application should be denied.

2 Opposition, ECF 571 at 3.

3 LOPK in its Reply to Creditor's Opposition stated as follows:

4 Second Generation attacked and identified discrete items of some of the  
5 Kaufler fees as being excessive. It suggested and argued that 12.65 hours for the  
6 application to be appointed as special counsel in the State Court Action was  
7 excessive and seeks to disallow it in its entirety. Second Generation claims that the  
8 entire application was prepared by the Debtor's counsel and not by Kaufler. But this  
9 accusation is not true. The application includes a detailed declaration of Philip  
10 Kaufler, prepared entirely by Kaufler going into depth regarding his extensive litigation  
11 background, his continuous large jury verdicts over the last 40 years, his more than  
12 35 published opinions, including two matters decided by California Supreme Court  
published opinions in the 9th Circuit of Appeals, and articles reported about him on  
the front page of the Daily Journal, articles in the Wall Street Journal and Los Angeles  
Times. Second Generation knows full well that the declaration was prepared entirely  
by Kaufler but intentionally misleads this court in its claim that it was prepared entirely  
by debtor's counsel.

13 ECF 574 at 7.

14 The court in its tentative ruling of August 30, 2021 agreed with the objection in part,  
15 stating: "Regarding employment, disallow 1.0 hour as 4.9 hours for review of employment  
16 application prepared by other employed counsel is excessive time." ECF 737 at 2. <sup>2</sup>

17 At the evidentiary hearings on September 1, 2021 and October 21, 2021, Kaufler  
18 contended that the time claimed was reasonable because although he conceded that his  
19 employment application was not prepared by him, but by Fredman Liberman Pearl, LLP,  
20 Debtor's general bankruptcy counsel, his work experience was extensive and the time he  
21 spent on reviewing the application was necessary for it to be complete and accurate. The  
22 court disagrees with LOPK in that the work of preparing the employment application was  
23 substantially done by another employed professional, Debtor's general bankruptcy  
24 counsel, which is already seeking compensation for this work. Kaufler's review, although  
25 necessary for the accuracy and completeness of the application, did not require 4.7 hours

26  
27 <sup>2</sup> The tentative ruling stating the fee category was 4.9 hours was incorrect; it is 4.7 hours as shown on the  
fee category breakdown in ECF 690.

1 at \$650.00 per hour, or \$3,055.00, that is, primarily to draft a detailed declaration to extol  
2 his prior litigation experience as he describes above, and the court determines that work of  
3 3.7 hours at \$650.00 per hour, or \$2,405.00, is reasonable and necessary for his work on  
4 his employment application which was primarily prepared by other counsel (i.e., Debtor's  
5 general bankruptcy counsel). The time spent in excess of this amount is excessive and  
6 duplicative of other compensated professionals. Accordingly, the court allows fees in this  
7 fee category for 3.7 hours of work at Kaufler's billing rate of \$650.00 per hour, or  
8 \$2,405.00.

9 **Fees Requested for Motion to Dismiss**

10 Originally, LOPK in the Fee Application requested fees of \$5,070 for 7.8 hours of work  
11 at Kaufler's hourly rate of \$650 for the category: "C. Kaufler Filed a Motion to Dismiss Four  
12 Causes of Action." ECF 567 at 7 (internal page citation 4). The stated justification for  
13 these fees in the Fee Application was:

14 The operative pleading in the State Court Action is the Second Amended  
15 Complaint ("the SAC"). It set out five causes of action in a 30 page complaint with  
16 110 charging allegations. The five causes of action were for 1) breach of contract;  
17 2) tortious interference with contract; 3) intentional interference with prospective  
economic advantage; 4) fraud and 5) negligent misrepresentation.

18 By the time Kaufler commenced his representations the court had already  
19 granted summary adjudication of the first cause of action for breach of contract.  
20 The first main task confronting Kaufler was to seek a way to deal with the intentional  
21 and negligent torts which were heading to trial. Kaufler ultimately conducted legal  
research and prepared and filed a motion to dismiss all tort claims arguing that  
Second Generation had made an election of remedies when it sought and obtained  
a writ of attachment on the contract claim.

22 Second Generation recognized that it would most likely lose the tort claims  
23 and ultimately stipulated to dismiss all of the tort claims and further stipulated that  
24 the Debtor and the other defendants receive a \$30,000 credit against the judgment  
on the breach of contract claim.

25 The motion was necessary and conferred a large benefit to the debtor. Had  
26 Kaufler not filed the motion, the Debtor would have been potentially liable for  
27 additional damages, including punitive damages. This could have increased money  
28



1 damages by several hundred thousand dollars and substantial additional attorneys  
2 fees.

3 ECF 567 at 7-8 (internal page citation 4-5). The requested fees for this category of work  
4 was reduced to \$3,640.00 for 5.6 hours of work because some of the billing entries in this  
5 category in the Fee Application were shifted to another category, and the category was  
6 renamed: "C. Motion to Dismiss." ECF 690 at 5-26.

7 Creditor stated its objection to the fees for this category as excessive and  
8 unreasonable as follows:

9 The Applicant bills excessively and unreasonably for tasks when considering  
10 the complexity, time comparably charged, and the nature of the issues addressed  
11 by the Applicant. 11 U.S.C. § 330(a)(3).

12 Similarly, the Applicant requests \$5,070 in fees for 7.8 hours to research,  
13 draft, prepare, and file a motion to dismiss four causes of action. These fees should  
14 also be denied because the Applicant filed the motion to dismiss on January 23,  
15 2018—before the effective date of Applicant's employment. (Weisberg Decl. at ¶6).  
16 Since the Applicant appears to be billing for prepetition services, the Court should  
17 deny the requested fees of \$5,070 for the motion to dismiss because these fees are  
18 not reasonable compensation for actual, necessary services. § 330(a)(1)(A).

19 Opposition, ECF 571 at 4.

20 LOPK in its Reply to Creditor's Opposition stated as follows:

21 Second Generation also argues that the time spent by Kaufler's motion to  
22 dismiss 4 causes of action for various torts should not be allowed. Second  
23 Generation claims that the motion was filed prior to Kaufler's appointment on  
24 February 9, 2018, and that Kaufler charged \$5,070 for that time. If you look at the  
25 billing that comprises the fee claim of \$123,922.50 there is only a few charges  
26 totaling \$780 for services rendered in connection with discussions and review of a  
27 stipulation whereby Second Generation agreed to dismiss all of these causes of  
28 action. All of the minimal charges were for services rendered after appointment as  
special counsel. The charges consist of .4 hours for review of confidential settlement  
communication regarding a Stipulation to dismiss the tort claims, another .4 for  
discussions with Cathy Trinh regarding the settlement, .4 for preparation of an email  
to Cathy Trinh outlining the terms of the settlement, and preparation of an email to  
opposing counsel regarding the terms of the stipulation. The total charges regarding  
the dismissal of the tort claim, as reflected on Exhibit "B" to the Declaration of Philip  
Kaufler in support of this motion is only \$780. The discrepancy set out in the points  
and authorities should be disregarded since there were no charges included for  
preparation of the motion. The bills do not include any fees for the motion to

dismiss, but only the few charges referenced above totaling \$780. No other part of the alleged \$5,070 is part of the \$123,922.50 fee claim presented in this motion.

ECF 574 at 8-9.

The court in its tentative ruling of August 30, 2021 agreed with the objection in part, stating: "Regarding motion to dismiss, disallow 0.5 hour as 1.2 hours for review of stipulation to dismiss prepared by opposing counsel excessive time as stipulation was simple." ECF 737 at 2. Having heard from the parties at the evidentiary hearings on the tentative ruling, the court will adopt its tentative ruling as to this item because the claimed time of 1.2 hours spent on Kaufler's review of the stipulation to dismiss prepared by opposing counsel was unreasonable and excessive because the stipulation was simple. However, the court overrules the other objections of Creditor to these fees as although the motion was dismiss was prepared before Kaufler's employment was authorized, the work performed was not for prepetition, preemployment services as contended by Creditor, but necessary follow up work, including consultation with the Debtor regarding the settlement of the tort claims against her, after employment was authorized to resolve Creditor's tort claims against the Debtor, which benefitted the estate as LOPK contends. Thus, the court agrees with LOPK that the time billed in this category is otherwise reasonable and necessary for this purpose. The court will allow fees for 5.1 hours of work in this fee category at Kaufler's billing rate of \$650.00, or \$3,315.00.

**Fees Requested for Opposition to Second Generation's Motion for Fees**

LOPK in the Fee Application requested fees of \$12,317.50 for 18.95 hours of work at Kaufler's hourly rate of \$650.00 for the category: "D. Second Generation's Motion for Attorney's Fees." ECF 567 at 8-9 (internal page citation 5-6). The stated justification for these fees in the Fee Application was:

The motion for attorney's fees as the prevailing party in the breach of contract claim was voluminous. In addition to the points and authorities there were several attorney declarations comprising hundreds of pages of exhibits consisting of the itemized billings. Second Generation employed several lawyers aggressively prosecuting its claims, while the Debtor had one lawyer. The lawyers for Second

1 Generation, each of whom filed a declaration together with exhibits, to support its fee  
2 motion were Alex Weingarten, Daniel Rozansky and David Boren. Also filing a  
3 declaration was the owner of Second Generation and an attorney and civil litigator  
4 himself was Michael Weisberg.

5 Since Kaufler was not attorney of record for almost the entire time frame  
6 covered by the motion, Kaufler was compelled to review extensive pleadings to  
7 familiarize himself with the scope and breadth of the litigation. To say this was  
8 scorched earth litigation might be an understatement. There were motions to quash  
9 service, attacks on the pleadings, both sides seeking writs of attachment, written  
10 discovery, numerous depositions and motions to compel and a voluminous motion for  
11 summary adjudication.

12 Kaufler also spent considerable time analyzing the time records looking for  
13 doubl[e] billings, time listings and other possible irregularities. It was necessary and  
14 reasonable to review each time record so as to make certain that the billings were  
15 appropriate.

16 Kaufler prepared extensive points and authorities and a detailed declaration to  
17 oppose the motion. Second Generation prevailed on the motion.

18 It was absolutely necessary for the Debtor to oppose the motion for fees,  
19 particularly because the request was for nearly \$750,000.

20 ECF 567 at 8-9 (internal page citation 5-6).

21 The amount of requested fees for this category of work was unchanged in the final fee  
22 brief, but the category was renamed: "D. Opposition to Sec Gen's Motion for Fees." ECF  
23 690 at 5-26.

24 Creditor stated its objection to the fees for this category as not reasonably likely to  
25 benefit the estate and unnecessary as follows:

26 The court should not allow compensation for services that were not reasonably  
27 likely to benefit the debtor's estate or were not necessary to the administration of the  
28 bankruptcy case. 11 U.S.C. § 330(a)(4)(A)(ii).

29 As stated above, the Applicant requests fees for almost 19 hours at \$12,317.50  
30 total for opposing SecGen's motion for attorney's fees in state court; however, these  
31 services were not necessary to the administration of the estate and the "considerable  
32 time" spent analyzing by the Applicant was not necessary or reasonable because not  
33 only did SecGen receive 100% of the attorney's fees it requested, but not even a time  
34 entry was denied for duplication. (Fee App. at 5:23-25, Docket No. 567); (Weisberg  
35 Decl. at ¶4). The Applicant fails to show how \$12,317.50 in fees to the estate was  
36 reasonably likely to benefit the Debtor's estate when there was not even an argument

1 made for any reduction in attorney's fees. These services were not necessary for the  
2 administration of the estate and the Applicant has failed to show that these services  
3 did anything for the Debtor's estate, other than increase costs. The Court should deny  
the \$12,317.50 in total fees requested for opposing SecGen's motion for attorney's  
fees.

4 ECF 571 at 5-6.

5 LOPK in its Reply to Creditor's Opposition stated as follows:

6 Second Generation next attacks as excessive the approximately 19 hours for  
7 opposing Second Generation's motion for attorney's fees in the State Court Action.  
The motion for fees consisted of a memorandum of points and authorities,  
8 declarations of Michael Weisberg, David Boren, Daniel Rozansky, Alex Weingarten,  
Supplemental Declaration of Daniel Rozansky, Request for Judicial Notice, and a  
9 Reply Memorandum. This motion, together with exhibits and pleadings consisted of  
hundreds of pages. See items 2 through 10 in the Request for Judicial [Notice] filed  
10 with this Reply.

11 In opposition, Kaufler prepared points and authorities, declarations of Tony  
12 Trinh, Cathy Trinh and Philip Kaufler. (See item RJN No. 8.) There is no question  
that the time to review and analyze the extensive motion and to prepare opposition  
13 papers and prepare for and attend the hearing on the motion was substantial. A  
billing of \$12,317.50 for this work was reasonable and necessary.

14  
15 ECF 574 at 8.

16 The court's August 30, 2021 tentative ruling did not discuss the fees in this billing  
17 category. The court has reviewed the work performed by LOPK in the copies of the  
18 pleadings relating to Creditor's motion for attorneys' fees in the State Court Action and the  
19 billing entries for this work. Creditor argues that the work is not compensable because it  
20 prevailed "100%" on the fee motion and that the time spent was not necessary because  
21 there is no showing that there was any positive result for the estate. The court agrees with  
22 LOPK that although the Debtor did not prevail in opposing Creditor's fee motion, it was  
23 reasonable and necessary for LOPK, on Debtor's behalf, to review the fees claimed by  
24 Creditor as a claim against her, which involved a substantial amount, \$750,000, and to  
25 oppose the motion. As stated previously, courts do not conclude that only successful  
26 actions may be compensated under 11 U.S.C. § 330 as such actions could be successful  
27  
28

1 and that it was not clear from the outset that success was remote. *In re Crown Oil, Inc.*,  
2 257 B.R. at 541 (quoting *In re Jefsaba, Inc.*, 172 B.R. at 789). The court cannot say at this  
3 juncture that the work could not have been successful and that the likelihood of success  
4 was remote from the outset.

5 However, at the hearing on the application on October 21, 2021, the court discussed  
6 with the parties LOPK's fees for 7.7 hours of time at \$650.00 per hour, or \$5,005.00, for  
7 services in preparing declarations of Cathy Trinh and Tony Trinh in opposition to the  
8 Creditor's attorney fee motion on March 11 and 12, 2018 (2.2 hours of time was listed  
9 under Fee Category "D", but 5.7 hours was erroneously listed under Fee Category "E").<sup>3</sup>  
10 At the hearing on October 21, 2021, Creditor objected to allowance of the claimed fees of  
11 \$5,000 as excessive for preparing two simple declarations. Having considered the  
12 declarations, particularly the relatively short declaration of Cathy Trinh, which just  
13 described her work experience, and hearing from the parties, the court determines that the  
14 amount of time, 7.7 hours, to prepare the relatively brief and simple declarations of Cathy  
15 Trinh and Tony Trinh is excessive and billing entries lumped the tasks of preparing the  
16 declarations, making it difficult for the court to determine how much time was spent on  
17 each declaration, and the court will allow 6.0 hours of time at \$650.00 per hour, or  
18 \$3,900.00, for such work, and will deduct 1.7 hours at \$650.00, or \$1,105.00, from this fee  
19 category. The court further determines that the time spent by LOPK in this fee category  
20 was reasonable and necessary on behalf of the estate and is compensable under 11  
21 U.S.C. § 330. The court will allow fees for 17.25 hours of work in this fee category at  
22 Kaufler's billing rate of \$650.00, or \$11,212.50

23 **Fees Requested for Motion for Pre-Judgment Interest**

24 LOPK in the Fee Application requested fees of \$24,472.50 for 37.65 hours of work at  
25 Kaufler's hourly rate of \$650.00 for the category: "E. Second Generation's Motion for  
26 \_\_\_\_\_

27 <sup>3</sup> The billing entries refer to one of the declarations being for David Trinh, but as Mr. Kaufler clarified at the  
28 hearing on October 21, 2021, the reference to David Trinh was incorrect since the declarant was Tony Trinh.

1 Prejudgment Interest.” ECF 567 at 9 (internal page citation 6). The stated justification for  
2 these fees in the Fee Application was:

3           At the same time, Second Generation filed a separate motion for prejudgment  
4 interest seeking \$615,946 in additional damages. After doing considerable legal  
5 research Kaufler reasonably believed that there was a legal defense to this claim. The  
6 main basis for an attempt to defeat pre-judgment interest relied upon the fact that  
7 Second Generation kept late ship the goods and resold them to its customers.an  
8 offset should have been applied against prejudgment interest since Second-  
9 Generation was able to mitigate damages and collect money on its sales of the  
10 merchandise. The problem, however became that prior counsel had not done  
11 discovery to determine the amount of money recovered by Second Generation from  
12 its sale of the late shipped goods.

13           It was certainly in the Debtor's interest to pursue an offset against prejudgment  
14 interest which could have saved to the estate over \$600,000. since there was a failure  
15 of proof quantifying the resales court granted Second Generations motion for  
16 prejudgment interest.

17 ECF 567 at 9 (internal page citation 6).

18           The amount of requested fees for this category of work was unchanged in the final fee  
19 brief, but the category was renamed: “E. Motion for Pre-Judgement Interest.” ECF 690 at  
20 5-26.

21           Creditor stated its objection to the fees for this category as excessive and  
22 unreasonable as follows:

23           The Applicant bills excessively and unreasonably for tasks when considering  
24 the complexity, time comparably charged, and the nature of the issues addressed by  
25 the Applicant. 11 U.S.C. § 330(a)(3).

26 \*\*\*

27           Next, the Applicant requests \$24,472.50 in fees for 37.65 hours at \$650 per  
28 hour in regards to SecGen’s motion for prejudgment interest. Setting aside the  
reasonableness and necessity of these fees, it is inconceivable how it would take the  
Applicant this long to prepare and draft the opposition to SecGen’s motion for  
prejudgment interest—it was less than 6 pages. (Weisberg Decl. at ¶7, Exhibit 1).  
Also, the motion was for the statutory 10% interest rate. This type of opposition,  
especially to a motion for statutory prejudgment interest, should not have taken 37.65  
hours of research and drafting. These services were not reasonably likely to benefit  
the Debtor’s estate, which the Applicant appears to admit by stating: “The problem,  
however became that prior counsel had not done discovery to determine the amount

1 of money recovered by Second Generation from its sale of the late shipped goods.”  
2 (Fee App. at 6:10-12). And any services rendered in opposing this motion would have  
only benefitted the Debtor’s estate if the Applicant’s arguments were colorable.

3 The Court should deny the fees requested for opposing SecGen’s motion for  
4 prejudgment interest.

5 Opposition, ECF 571 at 3-4.

6 LOPK in its Reply to Creditor’s Opposition stated:

7 Second Generation argues that the fees to oppose the motion for  
8 prejudgment interest totaling 37.65 hours was excessive. (See RJN No. 12 which is  
9 Second Generation’s extensive Motion for Prejudgment Interest) Second Generation  
10 mistakenly argues that all of these fees were to simply to prepare the opposition.  
11 But that is deliberately wrong. There were many components that go into this total,  
12 all of which were broken down in the billing records attached as Exhibit "B" to  
13 Kaufler’s declaration. There were many component tasks that went into preparing an  
14 opposition to the motion. The time consuming part of this involved scheduling out  
15 the series of alleged late shipments that comprised a two year time frame. The  
prejudgment interest determination involved the date of each shipment, the invoice  
charges for each shipment and the corresponding prejudgment interest for each  
shipment. (See RJN 16 for Defendants ‘Opposition to the Motion for Prejudgment  
Interest) Without going through each time entry as clearly described in the billing  
records, attached as Exhibit "B" to Kaufler’s declaration, a sampling of the time spent  
for each task related to opposing the motion is set out below as follows:

16	a) review of motion and legal research:	1.8 hours
17	b) review of Second Generation’s Request for Judicial Notice	.8
18	c) prepare email to Cathy Trinh re motion	.3
19	d) continue review of pleadings, extensive exhibits and	6.20
20	prepare summary	
21	e) review hundreds of purchase orders for the relevant time frame	2.70
22	f) review declaration of Joseph Souza (controller for Second Generation who put together extensive schedules to determine the amount of prejudgment interest	.60
23	g) legal research to prepare first draft of opposition to motion for prejudgment interest	1.6
24	h) prepare schedules summarizing sales to Second Generation over several years	.7

1 i) revise opposition to motion for prejudgment interest

4.20

2  
3 ECF 574 at 10 (internal page citation 6).

4 The court in its tentative ruling of August 30, 2021 agreed with the objection in part,  
5 stating:

6 (7) Regarding motion for prejudgment interest, 7.8 hours is billed for review of  
7 purchase orders at partner rate which work is a paralegal function, and reduce hours  
8 to 4.0 hours because excessive and reduce rate to paralegal rate of \$200/hour. In re  
9 Long Dei Liu, No. 8:19-cv-001341-JLS, 2020 WL 5543041 (C.D. Cal. Sept. 14, 2020)  
10 at \*11, citing, In re Music Merchants, Inc., 208 B.R. 944, 948 (9th Cir. BAP 1997). (8)  
Also regarding motion for prejudgment interest, disallow 6.2 hours for work preparing  
11 declarations as papers do not show that declarations were filed.

12 Having heard from the parties at the evidentiary hearings on the tentative ruling, the  
13 court will adopt its tentative ruling in part as to the paralegal work performed by counsel in  
14 computing purchase order amounts the claimed time of 7.7 hours spent on Kaufler's review  
15 of purchase orders and preparing a schedule of purchase orders (2.7 hours and 0.6 hour  
16 on March 2, 2018, 0.7 hour on March 5, 2018 and 3.7 hours on March 7, 2018) to compute  
17 the amount of principal for prejudgment interest was paralegal work and not compensable  
18 at a law partner rate, and the fees are thus unreasonable and excessive. The court has  
19 reviewed Kaufler's work in performing paralegal tasks in computing purchase order  
20 amounts and preparing a schedule and reduces the fees because the time spent for such  
21 tasks at an attorney rate was unreasonable and necessary and reduces the billing rate  
22 from Kaufler's law partner billing rate of \$650.00 per hour to a paralegal rate of \$200.00 per  
23 hour for an allowed total of 7.7 hours at \$200.00 per hour, or \$1,540.00. At trial, Kaufler  
24 admitted that these tasks were computational, but in his view, he was the only person in  
25 the office who could have performed these tasks because he did not have a paralegal in  
26 the office, which justified in his view the billing of computational work at his usual billing  
27 rate. The court disagrees with Kaufler's position because this work performed by counsel  
28 was clerical in nature because it was compiling numerical data and computing this data to



1 derive the amount of the principal of Creditor's judgment to base prejudgment interest as it  
2 had claimed, which is work that a lower cost professional should have performed, and not  
3 a higher billing attorney. In performing this work, Kaufler was not performing as an  
4 attorney, but as a paralegal, and he should be only compensated as a paralegal for  
5 performing paralegal tasks. The court will, however, allow some of the time he spent  
6 reviewing the purchase orders as time spent for legal analysis of the sales to the Creditor  
7 (i.e., the purchase orders), 0.7 hour on March 5, 2018, or \$455.00, which is compensable  
8 at his attorney billing rate.

9 As to the other issue raised in the tentative ruling about this fee category, Kaufler has  
10 satisfactorily explained at trial that the time spent in drafting the declarations in question  
11 related to the services rendered in opposing the Creditor's fee motion, which the court has  
12 ruled upon, and will allow such work at 6.2 hours at \$650 per hour, or \$3,705.00, in this  
13 category for the sake of convenience.<sup>4</sup>

14 As to the other objections of Creditor to these fees, the court generally rules that the  
15 fees and services were reasonable and necessary for LOPK to review and verify the  
16 amount of prejudgment interest requested by the Creditor. As stated previously, courts do  
17 not conclude that only successful actions may be compensated under 11 U.S.C. § 330 as  
18 such actions could be successful and that it was not clear from the outset that success was  
19 remote. *In re Crown Oil, Inc.*, 257 B.R. at 541 (quoting *In re Jefsaba, Inc.*, 172 B.R. at  
20 789). The court cannot say at this juncture that the work could not have been successful  
21 and that the likelihood of success was remote from the outset. However, there are some  
22 exceptions as noted below. The court rules on specific fees in this category as follows:

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24 <sup>4</sup> This fee category also includes 6.2 hours for services rendered on March 8 and 12, 2018 preparing  
25 declarations for Cathy Trinh and Tony Trinh in opposition to Second Generation's motion for attorneys' fees,  
26 which services were part of Fee Category "D". Mr. Kaufler agreed at the hearing on October 21, 2021 that  
27 these fees were in the wrong category. The court having reviewed these declarations determines that the  
28 fees are reasonable and allows them as part of Fee Category "E" rather than recomputing the fees in Fee  
Category "D" for the sake of convenience as such fees were put into Fee Category "E" in the fee category  
chart reviewed at the hearing on October 21, 2021. See ECF 690 at 12-14.

- (1) Fees for 2.15 hours of services on February 20 and 26, 2018 at \$650.00.per hour, or \$1,391.50, for reviewing and appearing on the Creditor's motion for ex parte hearing on the prejudgment interest motion are allowed as reasonable and necessary.
- (2) Fees for 2.9 hours of services on March 2, 4, 6, 7, 8 and 14, 2018 at \$650.00 per hour, or \$1,885.00, for communicating with the Debtor on the motion are allowed as reasonable and necessary.
- (3) Fees for 1.2 hours of services on March 16, 2018 at \$650.00 per hour, or \$780.00, for reviewing Creditor's reply to the opposition to the motion and preparing for the hearing are allowed as reasonable and necessary.
- (4) Fees for 0.4 hour of services on April 13, 2018 at \$650.00 per hour, or \$260.00, for reviewing the notice of entry of orders granting the Creditor's fee and prejudgment interest motions, although LOPK lumped services on two separate tasks together, the time appears to be reasonable.
- (5) LOPK requests fees for 17.0 hours of services on February 20, 2018 (0.7 hour), February 28, 2018 (1.8 hours), March 1, 2018 (0.8 hour), March 2, 2018 (0.6 hour and 1.6 hours), March 5, 2018 (4.2 hours), March 6 (5.7 hours) and March 12, 2018 (1.6 hours) at \$650.00 per hour, or \$11,050.00, for review of the Creditor's prejudgment interest motion, legal research and drafting the opposition. The court is not persuaded that the amount of time spent on these services was necessary and reasonable because the opposition consisting of six pages of text (four pages of actual argument and two pages of summary of argument) did not assert factual arguments, only legal arguments, and there were just two simple legal arguments: (1) the Creditor should not be allowed prejudgment interest as a matter of law because prejudgment interest is intended to represent an additional element of damages for purported loss of use of money, but in this instance, it would be a penalty because the Creditor kept the goods, resold them and further recouped a

1 judgment of \$2 million; and (2) the Creditor should not be awarded prejudgment  
2 interest as a matter of law because it was in possession of the purchased goods  
3 and could have sold them for at least 100% of their cost. Exhibit E to LOPK's  
4 Request for Judicial Notice, ECF 691, filed on August 18, 2021, at 00830-00835.  
5 The Creditor's motion consisting of nine pages of argument was based on a  
6 straightforward application of the prejudgment interest statute in California Civil  
7 Code, § 3287. *Id.* at 00628-00637. The possibly difficult factual issue was over  
8 the computation of the prejudgment interest amount based on the due date of the  
9 purchase orders, but although LOPK did computational work to verify the  
10 computations, it did not raise an objection to the computations. In the court's view,  
11 given the rather simple and straightforward issues presented by the Creditor's  
12 prejudgment interest motion, 6.0 hours of time is reasonable compensation at  
13 \$650.00 per hour, or \$3,900.00, for the tasks of reviewing, researching and  
14 drafting the opposition to the motion, which would be in addition to the other time  
15 allowed for responding to the motion as described above.

16 In sum, based on the above, the court will allow fees in this fee category in the total  
17 amount of \$13,921.50, consisting of \$10,216.50 for work on the Creditor's prejudgment  
18 interest motion (\$1,540.00 for the computational work for computing prejudgment interest  
19 based on review of the purchase orders, \$455.00 for analysis of the Creditor's sales,  
20 \$1,391.50 for the ex parte application to specially set a hearing on the motion, \$1,885.00  
21 for communications with the Debtor, \$785.00 for review of the reply to the opposition and  
22 preparing for the hearing, \$260.00 for review of the entry of orders granting the Creditor's  
23 fee and prejudgment interest motions and \$3,900.00 for reviewing, researching and drafting  
24 the motion to the Creditor's prejudgment interest motion) and \$3,705.00 for work on the  
25 declarations in opposing the Creditor's fee motion.

**Fees Requested for Motion for Ex Parte Attachment**

LOPK in the Fee Application requested fees of \$195.00 for 0.3 hour of work at Kaufler's hourly rate of \$650 for the category: "F. Kaufler Opposes Second Generation's Exparte Application for Writ of Attachment." ECF 567 at 9 (internal page citation 6). The stated justification for these fees in the Fee Application was:

Following the grant of summary adjudication on the breach of contract claim, Second Generation then filed extensive papers in support of an exparte application for a writ of attachment. In support of its application, Second Generation filed numerous declarations together with thousands of pages of exhibits and points and authorities.

Kaufler opposed the application on the grounds that there was no showing of irreparable harm requiring this to be determined on an ex parte basis. The court denied its application on the grounds that Second Generation did not make an adequate showing of irreparable harm.

ECF 567 at 9 (internal page citation 6).

The amount of requested fees for this category of work was unchanged in the final fee brief, but the category was renamed: “F. Ex Parte Attachment.” ECF 690 at 5-26.

This fee category relating to Creditor's ex parte application for a writ of attachment only covers 0.3 hours of work, and it relates to the following fee category claiming fees for work performed generally by LOPK on Creditor's application for a writ of attachment in the State Court Litigation. Creditor did not state a specific objection to this fee category, but its objection to fees for work on the writ of attachment in general is applicable. The court in its August 30, 2021 tentative ruling did not specifically address this fee category, and the court will discuss this fee category with the more generalized fee category for work on the writ of attachment.

### **Fees Requested for Writ of Attachment**

Originally, LOPK in the Fee Application requested fees of \$6,402.50 for 9.85 hours of work at Kaufler's hourly rate of \$650.00. The stated justification for these fees in the Fee Application was:

1 Following denial of the exparte application for writ of attachment, Second  
2 Generation filed lengthy and detailed applications for writs of attachment on regular  
3 notice, which Kaufler opposed. The writ of attachment was supported by a large  
4 compendium of pleadings attached to a request for judicial notice.

5 On behalf of the Debtor, Kaufler conducted legal research, prepared and filed  
6 Points and Authorities and declarations in opposition. Ultimately, based on the grant  
7 of summary adjudication court granted the writ of attachment.

8 It was important to oppose the application for writ of attachment because  
9 Second Generation was using this device in an attempt to obtain secured claims in  
10 the bankruptcy proceeding.

11 ECF 567 at 10 (internal page citation 7).

12 The amount of requested fees for this category of work was increased to \$10,302.50  
13 for 15.85 hours of work because some of the billing entries in other categories in the Fee  
14 Application were shifted to this category, and the fee category was renamed: "G. Writ of  
15 Attachment." ECF 690 at 5-26.

16 Creditor's motion for writs of attachment sought to amend its prior attachment order in  
17 the State Court Action to apply to parties other than LOPK's existing clients, including the  
18 Debtor who were defendants in the State Court Action, and this motion sought to add as  
19 attachment parties the following parties: (1) Melko Logistic Group Corp.; (2) MKK  
20 Enterprises, Corp.; (3) Baldwin Sun, Inc.; and (4) Kevin Voong. Exhibit F-1 to LOPK's  
21 Request for Judicial Notice, ECF 691, filed on August 18, 2021. According to LOPK, these  
22 parties were "[i]nnocent fabric suppliers, manufacturers and even Kody's landlord [which]  
23 had to retain lawyers and fight Second Generation" and which were in the supply chain of  
24 Kody Branch of California, the business that the Debtor was mainly working for. Reply to  
25 Creditor's Opposition, ECF 574 at 13. Although Creditor filed the motion in the State Court  
26 Action on an ex parte basis, it eventually served the defendants in the State Court Action  
27 represented by LOPK as the existing parties in the action. Exhibits F-1 and F-2 to LOPK's  
28 Request for Judicial Notice, ECF 691, filed on August 18, 2021.

1 Creditor stated its objection to the fees for this category as not reasonably likely to  
2 benefit the estate and unnecessary as follows:

3 The court should not allow compensation for services that were not reasonably  
4 likely to benefit the debtor's estate or were not necessary to the administration of the  
5 bankruptcy case. 11 U.S.C. § 330(a)(4)(A)(ii).

6 The Applicant requests \$6,402.50 in fees for 9.85 hours for opposing an  
7 application for a writ of attachment. (Fee App. at 7:10-12). In support of the fees  
8 regarding the writ of attachment, the Applicant states: "It was important to oppose the  
9 application for writ of attachment because Second Generation was using this device  
10 in an attempt to obtain secured claims in the bankruptcy proceeding." (Id.). This  
11 statement is patently false and highlights the excessive and unreasonable charges to  
12 the estate by the Applicant. SecGen's writ of attachment was stayed as to the Debtor  
13 because of the Debtor's bankruptcy petition, so SecGen did not seek a writ of  
14 attachment to obtain a secured claim as to the Debtor. Since the Applicant appears to  
15 be billing the estate for services that did not benefit it, the Court should deny the fees  
16 requested for opposing the writ of attachment in the amount of \$6,402.50.

17 ECF 571 at 6.

18 LOPK in its Reply to Creditor's Opposition stated as follows:

19 Second Generation makes an erroneous and sweeping argument that legal  
20 work rendered to stop Second Generation from adding most of Kody's supply chain  
21 as judgment debtors does not benefit the debtor. A large part of the debtor's income  
22 came from commissions she earned in connection with her being the main sales rep  
23 for Kody. She was responsible for selling to Second Generation \$25.5 Million worth of  
24 special ordered garments. And she had several other large customers. The attempt  
25 by Second Generation to add a multimillion dollar judgment against several  
26 companies that did business with Kody, however, would and did finish off Kody as a  
27 viable business. Innocent fabric suppliers, manufacturers and even Kody's landlord  
28 had to retain lawyers and fight Second Generation. Of course these businesses no  
longer would do business with Kody. This shut down Kody for good. It also shut off  
significant income for Cathy Trinh. This aggressive and strategically unsound tactic of  
Second Generation hurt all of Cathy Trinh's creditors, including Second Generation  
because it wiped out a significant income source for the debtor.

Ultimately, Second Generation withdrew the motion, but that was not until a  
series of court hearings and expartes that it lost. Bringing several lawyers up to speed  
on the litigation for each of the potential additional judgment debtors so that they  
could understand the lengthy and complex litigation required substantial time and  
substantial coordination.

ECF 574 at 13.

1 The court in its tentative ruling of August 30, 2021 stated:

2 (9) Applicant will need to explain why the fees for opposing Second Generation's writ  
3 of attachment are compensable as actual, necessary services benefiting the estate  
4 because the writ of attachment sought did not involve the debtor, but other nondebtor  
5 parties, that is, Second Generation sought a writ of attachment as to parties other  
6 than the debtor in this case. Applicant's argument in the application (Memorandum of  
7 Points and Authorities at 7) that it was important to oppose the writ of attachment  
8 because Second Generation was using this device in an attempt to obtain secured  
9 claims in the bankruptcy proceeding lacks merit because debtor was not a subject of  
10 the motion for writ of attachment. It appears that such services did not benefit the  
11 estate as argued by Second Generation as benefitting other parties and should be  
12 disallowed. In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 234 (Bankr. E.D. Cal.  
13 1988); In re Long Dei Liu, No. 8:19-cv-001341-JLS, 2020 WL 5543041 at \*11-12.

14 ECF 737 at 2.

15 Having heard from the parties at the evidentiary hearings on the tentative ruling, the  
16 court determines that it will sustain Creditor's objection to these fees on grounds that  
17 services performed by LOPK were not reasonably likely to benefit the debtor's estate or  
18 were not necessary to the administration of the bankruptcy case because the writ of  
19 attachment involved other parties. Creditor's motion for a writ of attachment in the State  
20 Court Action was to seek attachment against parties other than the Debtor. Creditor  
21 already had obtained a prejudgment attachment against the Debtor, which was stayed by  
22 the filing of her bankruptcy case, and thus, Creditor's action seeking the writ of attachment  
23 did not involve her or the bankruptcy estate.

24 In its papers, the fee application and the reply to Creditor's opposition, LOPK argues  
25 that the work opposing Creditor's motions against other parties, including the motion for  
26 writ of attachment and the motion to add additional judgment debtors, was necessary and  
27 benefitted the bankruptcy estate because it would stop the Creditor from obtaining a  
28 secured claim in the bankruptcy proceedings, it needed to defend the Debtor against the  
allegations about her conduct in those motions, and that it would protect the Debtor's  
income by defending the suppliers of Kody Branch of California, Inc., which was the  
Debtor's principal from which she earned sales commissions as a sales agent. The court

1 determines that none of these arguments has merit. First, LOPK's argument that its  
2 services to defend against Creditor's motion against other parties, not the Debtor, would  
3 stop the Creditor from obtaining a secured claim in this bankruptcy case lacks merit. LOPK  
4 cites no legal authority to support this argument that opposing relief sought against other  
5 parties, not the Debtor, would prevent the Creditor from having a secured claim in this  
6 bankruptcy case, and the court is not aware of any such authority. Second, LOPK's  
7 argument that it needed to defend the Debtor against allegations about her conduct in  
8 proceedings involving motions seeking relief against other parties lacks merit because  
9 LOPK has not shown that the rulings on motions seeking relief against other parties would  
10 have any legal effect on the Debtor or the estate since she was not a party to the motions.  
11 these arguments. Accordingly, LOPK has not demonstrated a reasonable likelihood of a  
12 benefit to the estate of having LOPK render services on those matters. Third, LOPK's  
13 argument that defending the other parties on the Creditor's motions seeking relief against  
14 them would protect the Debtor's income lacks merit because there is no evidence in the  
15 record that substantiates that such action did have, or could have had, such effect. LOPK  
16 has not otherwise demonstrated that its services on these matters resulted in any tangible  
17 benefit to the Debtor's bankruptcy estate, or would have reasonably been expected to  
18 result in a benefit to the estate. LOPK's actions on the Creditor's motions seeking relief  
19 against other parties, not the Debtor, may have benefitted these other parties, but not the  
20 Debtor's bankruptcy estate, and thus, its services in these actions were not necessary,  
21 reasonable and beneficial to the estate to be compensable from the estate.

22 Applying the *Mednet* factors to this fee category to determine the reasonableness of  
23 fees, the court cannot determine that the first factor is met. The services were authorized  
24 because on one hand, LOPK was authorized to represent the estate on behalf of the  
25 Debtor in the State Court Action, but the work performed was to assist nondebtor third  
26 parties. The court also cannot determine that the second factor that the services were  
27 necessary or beneficial of the administration of the estate at the time they were rendered



1 because there was no tangible benefit to the estate from these services and could not be  
2 as such because the services were to assist nondebtor parties on a matter not directly  
3 affecting the Debtor or the estate as the automatic stay in this bankruptcy case precluded  
4 enforcement of any attachment against the Debtor. *See In re B.E.S. Concrete Prods., Inc.*,  
5 93 B.R. 228, 234 (Bankr. E.D. Cal. 1988) (“There is no allocation of the bill among the  
6 various clients. Some services were rendered for the ultimate benefit of persons other than  
7 the debtor. *Since it is impossible to determine on this record what portion, if any, of the*  
8 *fees and expenses are properly attributable to the debtor, the request should be denied for*  
9 *that reason alone.*”) (emphasis added) and *In re Hunt*, 588 B.R. 496, 499-501 (Bankr. W.D.  
10 Mich. 2018) (finding that debtor’s counsel who sought compensation for assisting non-  
11 debtor individuals and entities was not compensable by the bankruptcy estate under §  
12 330(a)(4)) (cited and quoted in Supplemental Opposition, ECF 692 at 9). Contrary to  
13 LOPK’s assertion, Creditor’s attachment motion would not have had any effect in obtaining  
14 a secured claim in the bankruptcy proceedings. The court determines that the third factor  
15 of documentation is met from the billing entries in the fee category. The court cannot  
16 determine that the fourth factor of the reasonableness of the fees is met because the work  
17 was not necessary or beneficial to the administration of the estate as the services were to  
18 assist third parties, not the Debtor.

19 Also as previously stated, regarding the requirement that bankruptcy estate  
20 professionals exercise billing judgment, the Ninth Circuit has stated that employment  
21 authorization does “not give [the professional] free reign to run up a tab without considering  
22 the maximum probable recovery.” *Unsecured Creditors’ Committee v. Puget Sound*  
23 *Plywood, Inc.*, 924 F.2d at 958. Before undertaking work on a bankruptcy matter, a  
24 professional is obligated to consider:

25 (d) Is the burden of the probable cost of legal services disproportionately large in  
26 relation to the size of the estate and maximum probable recovery?

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

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

3 *Id.* at 959-960 (citation omitted). There is no showing that LOPK considered these  
4 concerns in undertaking this work as there is no showing how the estate would benefit if  
5 the services were rendered or that there was any likelihood of the disputed issues being  
6 resolved successfully to the benefit of the estate. Moreover, “[w]hen a cost benefit  
7 analysis indicates that the only parties who will likely benefit from [a service] are the trustee  
8 and his professionals,’ the service is unwarranted and a court does not abuse its discretion  
9 in denying fees for those services.” *In re Mednet*, 251 B.R. at 108-109 (quoting *In re*  
10 *Riverside-Linden Investment Co.*, 925 F.2d 320, 321 (9th Cir. 1991)). In this instance, the  
11 cost/benefit analysis does not show any benefit to the estate for these services, only for the  
12 professional.

13 In performing the services in this category, LOPK was not directly assisting the Debtor  
14 or the bankruptcy estate because she was not a party to the motion for the writ of  
15 attachment. The motion for the writ of attachment was to subject other parties not the  
16 Debtor to the prior order for attachment, and LOPK’s work in this fee category was to assist  
17 other parties defend the motion against them, not the Debtor, by helping their counsel “get  
18 up to speed”. These other parties retained their own counsel to defend the motion against  
19 them and did not retain LOPK to represent them in defending the motion. LOPK’s stated  
20 intent to doing this work for other parties was to help them fend off the Creditor from these  
21 parties who had business relationships with the Debtor, but there is no indication that  
22 LOPK did any cost/benefit analysis for the estate in incurring over \$10,000 in fees in doing  
23 work to defend other parties, not the Debtor, and not the estate. The amount of fees is  
24 also unreasonable in terms of LOPK just reviewed pleadings seeking relief against other  
25 parties in order to educate counsel for those other parties and communicated with such  
26 counsel to “get them up to speed.”

1 Accordingly, because the services rendered did not directly benefit the estate and do  
2 not otherwise meet the factors under the applicable case law in *Mednet* and *Puget Sound*  
3 *Plywood*, the court disallows the fees in the two fee categories relating to the ex parte  
4 application for a writ of attachment and the motion for a writ of attachment, and none of the  
5 fees. 0.3 hours at Kaufler's billing rate of \$650.00, or \$195.00, for the ex parte application  
6 for writ of attachment, and 15.85 hours of work at Kaufler's billing rate of \$650.00, or  
7 \$10,302.50, for the motion for writ of attachment, are allowed.

8 **Fees Requested for Motion to Add Potential Judgment Debtors**

9 Originally, LOPK in the Fee Application requested fees of \$48,392.50 for 74.45 hours  
10 of work at Kaufler's hourly rate of \$650.00. The stated justification for these fees in the  
11 Fee Application was:

12 Second Generation then filed a motion to amend the judgment to add  
13 additional judgment debtors. Kaufler was required coordinate with other counsel  
14 brought in to defend the additional judgment debtors to bring them up to speed on the  
15 ongoing litigation. Kaufler also went ex parte to seek a continuance as a team of  
lawyers was being put together to challenge the motion. The efforts were successful,  
and ultimately Second Generation withdrew its motion.

16 ECF 567 at 10 (internal page citation 7). The amount of requested fees for this category  
17 of work was reduced to \$34,547.00 for 53.15 hours of work because some of the billing  
18 entries in this category in the Fee Application were shifted to another category. ECF 690  
19 at 5-26.

20 Creditor's motion to add additional judgment debtors sought to add parties other  
21 than LOPK's existing clients, including the Debtor who were defendants in the State Court  
22 Action, and this motion sought to add as additional judgment debtors the following parties:  
23 (1) Tony Trinh; (2) Melko Logistic Group Corp.; (3) MKK Enterprises, Corp.; (4) Ben Lynn  
24 Enterprises, Inc.; (5) Baldwin Sun, Inc.; (6) SIO, LLC; (7) Viet MY Export Garments  
25 Company Limited; (8) Gia Phu, Corporation; (9) Kevin Voong; and (10) Cong Ty TNHH My  
26 Chanh Vuong. Exhibit G-1 to LOPK's Request for Judicial Notice, ECF 691, filed on  
27 August 18, 2021. According to LOPK, like the prospective attachment parties, these

1 parties were “[i]nnocent fabric suppliers, manufacturers and even Kody's landlord [which]  
2 had to retain lawyers and fight Second Generation” and which were in the supply chain of  
3 Kody Branch of California, the business that the Debtor was mainly working for. Reply to  
4 Creditor's Opposition, ECF 574 at 13. Although Creditor filed the motion in the State Court  
5 Action on an ex parte basis, it eventually served the defendants in the State Court Action  
6 represented by LOPK as the existing parties in the action. Exhibits G-1. G-2 and G-3 to  
7 LOPK's Request for Judicial Notice, ECF 691, filed on August 18, 2021.

8 Creditor stated its objection to the fees for this category as excessive, unreasonable,  
9 unnecessary and not benefiting the estate as follows:

10 The Applicant bills excessively and unreasonably for tasks when considering  
11 the complexity, time comparably charged, and the nature of the issues addressed  
12 by the Applicant. 11 U.S.C. § 330(a)(3).

13 \*\*\*

14 Most egregious of the excessive and unreasonable compensation requested  
15 are the fees sought for an opposition to motion to add judgment debtors for a total of  
16 \$48,392.50 in fees for allegedly almost 75 hours. The Applicant misleads on the  
17 reasonableness of this compensation and the necessity to the administration of the  
18 estate. Most importantly, the Applicant's efforts worked against the pecuniary  
19 interest of the Debtor and creditors of the chapter 11 estate. To the extent that  
20 SecGen is successful in its motion to add judgment debtors, creditors of the estate  
21 would benefit because parties other than the Debtor would be liable for SecGen's  
22 judgment, thereby reducing SecGen's claim in this case.

23 The Applicant contends he “was required to coordinate with other counsel  
24 brought in to defend the additional judgment debtors,” but the Applicant fails to  
25 indicate that these services were rendered on behalf of the Debtor exclusively or for  
26 the Debtor at all. The Applicant still represents additional judgment debtors in the  
27 action. While the Application correctly indicates that the motion to add potential  
28 judgment debtors was withdrawn, the Applicant fails to state that it was refiled and  
instead misleads the Court to believe the Applicant's “efforts were successful.” The  
Applicant knows about the refiled motion to add potential judgment debtors because  
he represents additional potential judgment debtors in the action. (Weisberg Decl. at  
¶8). The Applicant's work was unreasonable and it was not in the estate's interest.  
The Court should deny the \$48,392.50 in fees requested for “coordinat[ion] with  
other counsel” to represent entities that are not the Debtor.

Opposition, ECF 571 at 3-5.

LOPK in its Reply to Creditor's Opposition stated as follows:

Again, Second Generation attempts to mislead this Court. It implies that all of this money was charged to prepare an opposition to the motion to add additional judgment debtors, when in fact there were a series of different activities that were necessary to coordinate and stop Second Generation from adding a host of other judgment debtors. The one thing that the additional judgment debtors had in common is that they are in the supply chain of Kody, the first named defendant in the State Court Action that signed the contract with Second Generation to deliver several million dollars of garments to Second Generation. For the convenience of the Court, we have copied and pasted the time records comprising the coordination of opposing the motion to potential additional judgment debtors:

4/17/2018	review Sec Gen exparte application to advance hearing date to amend judgment and accompanying declarations and exhibits and prepare for hearing	0.6
4/18/2018	review Declaration of Michael Weisberg in support of exparte application to amend the or er granting applications for writs of attachment	1.7
4/18/2018	review Notice of Ruling on Sec Gen exparte to advance hearing date and request for permission to file additional pages	0.2
4/19/2018	prepare email to Cathy re exparte application to add judgment debtors and review Cathy's response	0.3
4/19/2018	appear for exparte hearing to advance motion to amend judgment	3.2
4/19/2018	review exparte application to advance hearing date on motion to amend judgment	0.5
4/19/2018	review Dec of Rozansky in Opposition to Judgment debtor's application to continue hearing date	0.2
4/19/2018	review Sec Gen Request for Judicial Notice for Order Amending Judgment to Add Additional Judgment Debtors and extensive pleadings	1.8
4/19/2018	review declaration of Michael Weisberg in Support of Sec Gen Motion to Amend Judgment to Add Additional Judgment Debtors and exhibits	0.7
4/19/2018	review declaration of David Boren in Support of Sec	0.8

1		Gen motion to Amend Judgment	
2	4/20/2018	review motion to amend judgment to add judgment debtors	1.2
3	4/20/2018	review extensive application to amend order granting writs of attachment	1.2
4			
5	4/20/2018	review declaration of Jeffrey Dulberg in support of motion to add judgment debtors	0.5
6			
7	4/20/2018	further review Sec Gen Motion for an Order Amending Judgment to Add Additional Judgment Debtors	0.8
8			
9	4/23/2018	review email from Cathy re her input into application to add judgment debtors	0.2
10			
11	4/23/2018	telephone conference with Cathy and Mark Lieberman re motion to add judgment debtors	0.75
12			
13	4/23/2018	prepare email giving exparte notice to continue motion to amend judgment to add judgment debtors	0.3
14			
15	4/23/2018	telephone call with Veronica Darling attorney for Kevin Voong re exparte notice	0.2
16	4/23/2018	review Sec Gen Request for Judicial Notice in support of Sec Gen application to amend order granting writs of attachment; and review extensive pleadings	1.3
17			
18	4/23/2018	conference call with new counsel for additional judgment debtors	0.4
19			
20	4/23/2018	prepare exparte application for order to continue Sec Gen motion to amend the judgment to add additional judgment debtors legal research declaration of Philip Kaufler	2.6
21			
22			
23	4/24/2018	legal research re due process rights of proposed additional judgment debtors; prepare ex parte application to continue hearing on motion to amend judgment	4.2
24			
25			
26	4/24/2018	prepare email to client re ex parte application to continue motion re amending judgment	0.3
27			

1	4/24/2018	prepare exparte application for order to continue Sec	1.4
2		Gen motion to amend the judgment to add additional	
3		judgment debtors legal research declaration of	
4		Philip Kaufler	
5	4/24/2018	review Kevin Voong Opposition to Sec Gen	0.3
6		Application to Add Additional Judgment Debtors	
7	4/24/2018	review Sec Gen Opposition to Continue Motion to	0.3
8		Amend Judgment	
9	4/24/2018	prepare Notice of Appeal	0.4
10	4/24/2018	filing fee for exparte application to amend judgment	1
11		to add additional judgment debtors	
12	4/25/2018	review Lieberman email to Coulson and Coulson response re	
13		status of motion to add judgment debtors	0.2
14	4/25/2018	prepare summaries of cases re: liability for additional	
15		judgment debtors	5.1
16	4/27/2018	review Notice of Ruling re exparte to continue motion	
17		to amend order granting writs of attachment	0.2

Second Generation makes an erroneous and sweeping argument that legal work rendered to stop Second Generation from adding most of Kody's supply chain as judgment debtors does not benefit the debtor. A large part of the debtor's income came from commissions she earned in connection with her being the main sales rep for Kody. She was responsible for selling to Second Generation \$25.5 Million worth of special ordered garments. And she had several other large customers. The attempt by Second Generation to add a multimillion dollar judgment against several companies that did business with Kody, however, would and did finish off Kody as a viable business. Innocent fabric suppliers, manufacturers and even Kody's landlord had to retain lawyers and fight Second Generation. Of course these businesses no longer would do business with Kody. This shut down Kody for good. It also shut off significant income for Cathy Trinh. This aggressive and strategically unsound tactic of Second Generation hurt all of Cathy Trinh's creditors, including Second Generation because it wiped out a significant income source for the debtor.

Ultimately, Second Generation withdrew the motion, but that was not until a series of court hearings and expartes that it lost. Bringing several lawyers up to speed on the litigation for each of the potential additional judgment debtors so that they could understand the lengthy and complex litigation required substantial time and substantial coordination.

1 In the past several months Second Generation has renewed its motion to add  
2 additional judgment debtors. This time it added several more. It is attempting to  
3 obtain judgments against 10 companies and individuals that had any relationship  
with Kody.

4 The hearing on its motion is this week, on April 22, 2021.  
5 ECF 574 at 10-14.

6 In its supplemental opposition, Creditor responded to LOPK's reply and elaborated on  
7 its objection to fees in this category:

8 The most unreasonable of the Applicant's excessive compensation requested  
9 from the Debtor's estate are the fees sought in opposing a motion to add judgment  
10 debtors—where the Applicant allegedly seeks \$48,392.50 in fees for almost 75 hours  
11 of services. As pointed out in the Opposition, the Applicant's efforts to oppose the  
12 addition of third-party judgment debtors were not reasonably likely to benefit the  
13 Debtor's estate and these services certainly were not necessary for the administration  
14 of this case. (See Opp. at 4:26-5:15); § 330(a)(4)(A). The Applicant's services  
15 rendered in opposing the motion to add judgment debtors could not have been  
16 reasonably likely to benefit the estate because the addition of other judgment debtors  
would have decreased the Debtor's estate's share of liability on the judgment, which  
would reduce the total claims in this case. The Applicant alleges, without evidence,  
that SecGen's judgment "finish[ed] off Kody as a viable business" and that because  
Kody Branch of California closed, the Debtor was "shut off [from] significant income."  
(Reply at p.13 of 40, lines 7-18, Docket No. 574).

17 The biggest problem with the Applicant's argument is that it is not true; at best,  
18 it is speculative; and it fails to use "reasonable billing judgment." See *In re Auto Parts*  
19 *Club, Inc.*, 211 B.R. 29, 34 (B.A.P. 9th Cir. 1997) ("[A]n attorney must scale back its  
20 services based on the reasonable expected recovery for the estate, not the potential  
21 optimum recovery."). Kody Branch of California, Inc. filed for bankruptcy before the  
22 Debtor, and it had limited prospects for an effective reorganization before it was  
23 converted to chapter 7 within the first year of the case. The Applicant argues that  
24 SecGen's judgment and addition of third-parties as judgment debtors caused Kody  
25 Branch of California to close, which then, in turn, "shut off significant income" for the  
26 Debtor. The causal connection here is far too attenuated to credibly argue that but for  
27 SecGen's motion to add judgment debtors, then Kody Branch of California would  
28 have successfully reorganized and the Debtor would have realized a significant  
amount of income—or that such a result was at least probable. The Applicant failed to  
consider the disproportionality of the cost of these legal services in relation to the size  
of the estate and the maximum or best probable recovery. *In re Garcia*, 335 B.R. at  
724.



1 In the Reply, the Applicant did not address the fact that the granting of the  
2 motion to add judgment debtors would reduce the estate's corresponding liability on  
3 the judgment. The Court should find that the cost to the Debtor's estate in spending  
4 almost \$50,000 for the speculative possibility of reducing liability for third parties  
5 would have far outweighed any possible benefit to the Debtor's estate, especially  
6 when considering the alternative to the services rendered was a reduction in the  
7 estate's direct liability on the claim. And furthermore, the Applicant did not exercise  
8 "reasonable billing judgment" in determining the maximum probable recovery "to the  
9 estate" and the extent to which the estate would suffer if the Applicant did not render  
10 services in opposing the addition of third-party judgment debtors. See *In re Garcia*,  
11 335 B.R. at 724. Thus, in addition to the other fees, the Court should deny the  
12 \$48,392.50 in fees incurred by the Applicant because they were not reasonably likely  
13 to benefit the Debtor's estate, they were not necessary for the administration of the  
14 case, and the Applicant did not exercise reasonable billing judgment because the  
15 Applicant did not consider the cost or benefit to the estate if the services were not  
16 rendered.

17 Supplemental Opposition, ECF 692 at 7-9.

18 The court in its tentative ruling of August 30, 2021 stated:

19 (10) Applicant will need to explain why the fees for opposing Second Generation's  
20 motion to add additional judgment debtors are compensable as actual, necessary  
21 services benefiting the estate because the judgment debtors to be added did not  
22 involve the debtor, but other nondebtor parties, that is, Second Generation sought to  
23 add additional judgment debtors who were not the debtor in this case. Applicant's  
24 argument in the application (Memorandum of Points and Authorities at 7) that he was  
25 required to coordinate with other counsel brought in to defend the additional judgment  
26 debtors to bring them up to speed on the ongoing litigation lacks merit because the  
27 motion involved parties other than the debtor and their counsel could get up to speed  
28 themselves. It appears that such services did not benefit the estate as argued by  
Second Generation as benefitting other parties and should be disallowed. In *re*  
B.E.S. Concrete Products, Inc., *supra*; In *re* Long Dei Liu, *supra*.

ECF 737 at 2.

Having heard from the parties at the evidentiary hearings on the tentative ruling, the  
court determines that it will sustain Creditor's objection to these fees on grounds that  
services performed by LOPK were not reasonably likely to benefit the debtor's estate or  
were not necessary to the administration of the bankruptcy case because the writ of  
attachment involved other parties. Creditor's motion to add additional judgment debtors in  
the State Court Action was to enforce the judgment which had already been entered  
against the Debtor and others by adding additional parties other than the Debtor. Creditor

1 already had obtained a judgment against the Debtor and others, and Creditor's motion to  
2 add additional judgment debtors to seek collection against other parties did not involve her  
3 or the bankruptcy estate.

4 As previously stated regarding the fees for services on the Creditor's motion for writ of  
5 attachment against other parties, in its papers, the fee application and the reply to  
6 Creditor's opposition, LOPK argues that the work opposing Creditor's motions against  
7 other parties, including the motion for writ of attachment and the motion to add additional  
8 judgment debtors, was necessary and benefitted the bankruptcy estate because it needed  
9 to defend the Debtor against the allegations about her conduct in those motions, and that it  
10 would protect the Debtor's income by defending the suppliers of Kody Branch of California,  
11 Inc., which was the Debtor's principal from which she earned sales commissions as a sales  
12 agent. The court determines that none of these arguments has merit. First, LOPK's  
13 argument that it needed to defend the Debtor against allegations about her conduct in  
14 proceedings involving motions seeking relief against other parties lacks merit because  
15 LOPK has not shown that the rulings on motions seeking relief against other parties would  
16 have any legal effect on the Debtor or the estate since she was not a party to the motions.  
17 these arguments. Accordingly, LOPK has not demonstrated a reasonable likelihood of a  
18 benefit to the estate of having LOPK render services on those matters. Second, LOPK's  
19 argument that defending the other parties on the Creditor's motions seeking relief against  
20 them would protect the Debtor's income lacks merit because there is no evidence in the  
21 record that substantiates that such action did have, or could have had, such effect. LOPK  
22 has not otherwise demonstrated that its services on these matters resulted in any tangible  
23 benefit to the Debtor's bankruptcy estate, or would have reasonably been expected to  
24 result in a benefit to the estate. LOPK's actions on the Creditor's motions seeking relief  
25 against other parties, not the Debtor, may have benefitted these other parties, but not the  
26 Debtor's bankruptcy estate, and thus, its services in these actions were not necessary,  
27 reasonable and beneficial to the estate to be compensable from the estate.

1 Applying the factors established in *Mednet* to this fee category, the court cannot  
2 determine that the first factor is met. On one hand, LOPK was authorized to represent the  
3 estate on behalf of the Debtor in the State Court Action, but the work performed was to  
4 assist nondebtor third parties. The court also cannot determine that the second factor that  
5 the services were necessary or beneficial of the administration of the estate at the time  
6 they were rendered because there was no tangible benefit to the estate from these  
7 services and could not be as such because the services were to assist nondebtor parties  
8 on a matter not directly affecting the Debtor or the estate. See *In re B.E.S. Concrete*  
9 *Prods., Inc.*, 93 B.R. at 234 (“There is no allocation of the bill among the various clients.  
10 Some services were rendered for the ultimate benefit of persons other than the debtor.  
11 *Since it is impossible to determine on this record what portion, if any, of the fees and*  
12 *expenses are properly attributable to the debtor, the request should be denied for that*  
13 *reason alone.*”) (emphasis added) and *In re Hunt*, 588 B.R. at 499-501 (finding that  
14 debtor’s counsel who sought compensation for assisting non-debtor individuals and entities  
15 was not compensable by the bankruptcy estate under § 330(a)(4)) (cited and quoted in  
16 Supplemental Opposition, ECF 692 at 9). The court determines that the third factor of  
17 documentation is met from the billing entries in the fee category. The court cannot  
18 determine that the fourth factor of the reasonableness of the fees is met because the work  
19 was not necessary or beneficial to the administration of the estate as the services were to  
20 assist parties not the Debtor, who was not the subject of the Creditor’s motion.

21 Also as previously stated, regarding the requirement that bankruptcy estate  
22 professionals exercise billing judgment, the Ninth Circuit has stated that employment  
23 authorization does “not give [the professional] free reign to run up a tab without considering  
24 the maximum probable recovery.” *Unsecured Creditors’ Committee v. Puget Sound*  
25 *Plywood, Inc.*, 924 F.2d at 958. Before undertaking work on a bankruptcy matter, a  
26 professional is obligated to consider:

1 (g) Is the burden of the probable cost of legal services disproportionately large in  
relation to the size of the estate and maximum probable recovery?

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

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

5 *Id.* at 959-960 (citation omitted). There is no showing that LOPK considered these  
6 concerns in undertaking this work as there is no showing how the estate would benefit if  
7 the services are rendered or that there was any likelihood of the disputed issues being  
8 resolved successfully to the benefit of the estate. The court agrees with the Creditor that  
9 such action was contrary to the estate's interests in that the motion was intended to make  
10 parties other than the Debtor liable for the Creditor's judgment, and having other liable  
11 parties meant other collection sources for the Creditor other than the Debtor. Moreover,  
12 "[w]hen a cost benefit analysis indicates that the only parties who will likely benefit from [a  
13 service] are the trustee and his professionals,' the service is unwarranted and a court does  
14 not abuse its discretion in denying fees for those services." *In re Mednet*, 251 B.R. at 108-  
15 109 (quoting *In re Riverside-Linden Investment Co.*, 925 F.2d at 321). In this instance, the  
16 cost/benefit analysis does not show any benefit to the estate for these services, only for the  
17 professional.

18 In performing the services in this category, LOPK was not directly assisting the Debtor  
19 or the bankruptcy estate because she was not a party to the motion to add additional  
20 judgment debtors. The motion to add additional judgment debtors was to add parties not  
21 the Debtor to the judgment, and LOPK's work in this fee category was to assist other  
22 parties defend the motion against them, not the Debtor, by helping their counsel "get up to  
23 speed". These other parties retained their own counsel to defend the motion against them  
24 and did not retain LOPK to represent them in defending the motion. LOPK's stated intent  
25 to doing this work for other parties was to help them fend off the Creditor from these parties  
26 who had business relationships with the Debtor, but there is no indication that LOPK did  
27 any cost/benefit analysis for the estate in incurring almost \$35,000 in fees in doing work to

1 defend other parties, not the Debtor, and not the estate. The amount of fees is also  
2 unreasonable in terms of LOPK just reviewed pleadings seeking relief against other parties  
3 in order to educate counsel for those other parties and communicated with such counsel to  
4 “get them up to speed.”

5 Accordingly, because the services rendered did not directly benefit the estate and do  
6 not otherwise meet the factors under the applicable case law in *Mednet* and *Puget Sound*  
7 *Plywood*, the court disallows the fees in this fee category, 53.15 hours of work at Kaufler’s  
8 billing rate of \$650.00, or \$34,547.00, and none of the fees in this category are allowed.

9 **Fees Requested for Appeal**

10 LOPK in the Fee Application requested fees of \$1,820.00 for 2.8 hours of work at  
11 Kaufler’s hourly rate of \$650.00 for the category: “I. Appeal on the Judgment.” ECF 567 at  
12 9 (internal page citation 6). The stated justification for these fees in the Fee Application  
13 was:

14 Facing a huge judgment, Kaufler explored filing a Notice of Appeal. This  
15 required [sic] substantial legal research on the issues of enforceability of a liquidated  
16 damage clause and issues surrounding alter ego and single enterprise. There were  
17 substantial grounds for an appeal and Kaufler filed a Notice of Appeal and designated  
the record.

18 ECF 567 at 10 (internal page citation 7).

19 The amount of requested fees for this category of work was unchanged in the final fee  
20 brief, but the category was renamed: “I. Appeal.” ECF 690 at 5-26.

21 Creditor’s opposition did not directly address this fee category. ECF 571.

22 The court in its tentative ruling of August 30, 2021 stated: “(11) Regarding the work on  
23 the notice of appeal, there are no filed papers, and the application is unclear what the  
24 possible notice of appeal related to, that is, there is no explanation in the application was  
25 the final order involving the debtor to be appealed and the basis for the possible appeal.”  
26 ECF 737 at 3.

1 Having heard from the parties at the evidentiary hearings on the tentative ruling, the  
2 court will approve the fees in this fee category because as LOPK showed at the evidentiary  
3 hearings, this work was reasonable, necessary and beneficial to the estate for the Debtor  
4 to have appellate review of the judgment from the State Court Action that she was liable to  
5 Creditor based on alter ego liability. LOPK's work was to perfect the appeal by filing the  
6 notice of appeal, though other counsel later handled the appeal, which was not successful.  
7 The amount of fees in this category for this work is reasonable, and the court will allow fees  
8 for 2.8 hours of work in this fee category at Kaufler's billing rate of \$650.00, or \$1,820.00.

9 **Fees Requested for Motion for Reconsideration**

10 LOPK in the Fee Application did not request fees for its "Motion for Reconsideration,"  
11 but in its final fee brief requests fees of \$6,240.00 for 9.6 hours of work at Kaufler's hourly  
12 rate of \$650.00 for this additional category of work: "J. Motion for Reconsideration." ECF  
13 567 at 10 (internal page citation 7).

14 Having heard from the parties at the evidentiary hearings, the court will approve the  
15 fees in this fee category because as LOPK showed at the evidentiary hearings, this work  
16 was reasonable, necessary and beneficial to the estate for the Debtor to seek the judgment  
17 from the State Court Action that she was liable to Creditor based on alter ego liability.  
18 LOPK's work based on possible disqualification of the trial judge. Although the motion was  
19 unsuccessful, as stated previously, courts do not conclude that only successful actions  
20 may be compensated under 11 U.S.C. § 330 as such actions could be successful and that  
21 it was not clear from the outset that success was remote. *In re Crown Oil, Inc.*, 257 B.R. at  
22 541 (quoting *In re Jefsaba, Inc.*, 172 B.R. at 789). The court cannot say at this juncture  
23 that the work could not have been successful and that the likelihood of success was  
24 remote from the outset. The amount of fees in this category for this work is reasonable,  
25 and the court will allow fees for 9.6 hours of work in this fee category at Kaufler's billing  
26 rate of \$650.00, or \$6,240.00.

**Expenses Requested by LOPK**

LOPK in the Fee Application requested reimbursement of expenses of \$1,864.50 that it incurred for this engagement, which consisted of: (1) \$811.50 for photocopies: (2) \$995.00 for filing fees; and \$58.00 for parking. ECF 567 at 11 (internal page citation 8). As indicated in the fee application, photocopy expenses totaling \$811.50 for 2,968 pages were incurred on February 26, 2018 for 150 pages at \$.25 per page, \$37.50; on March 31, 2018 for 996 pages at \$.25 per page, \$249.00; on April 30, 2018 for 730 pages at \$.25 per page, \$184.00; on May 30, 2018 for 820 pages at \$.25 per page; and on June 21, 2018, 272 pages at \$.50 per page. ECF 567 at 22-43. LOPK's employment application approved by the court stated that photocopy charges are \$.12 per page. ECF 45 at 10. Thus, it appears that LOPK in the Fee Application is requesting reimbursement of photocopy expenses at an erroneous rate (\$.25 and \$.50 per page instead of \$.12 per page authorized in the approved employment application). The court has recomputed the correct amount of the photocopy charges for 2,968 pages based on the authorized rate of \$.12 per page, and thus, the allowed amount for photocopy charges is \$356.16, and the requested amount exceeding this amount is disallowed. The court has reviewed the other charges for court filing fees and parking and determines that they are reasonable and should be allowed. Accordingly, the court allows expenses incurred by LOPK in the amount of \$1,409.16.

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1 **CONCLUSION**

2 For the foregoing reasons, the Fee Application of LOPK is approved in part and  
3 disapproved in part. LOPK's professional fees and expenses in the amount of \$54,449.00  
4 in fees and \$1,409.16 in expenses totaling \$55,858.16 are allowed. The balance of the  
5 professional fees and expenses requested by LOPK is disallowed. A separate final order  
6 is being filed and entered concurrently herewith.

7 IT IS SO ORDERED.

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23 Date: March 28, 2022



24 Robert Kwan  
25 United States Bankruptcy Judge  
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