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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re ) Case No. 13-10688-B-7  
Natividad Ayala Chavez and )  
Librada Chavez, )  
Debtors. )  
\_\_\_\_\_ )

**ORDER REGARDING CHAPTER 7 TRUSTEE’S APPLICATION  
FOR COMPENSATION**

Before the court is an application for compensation filed by the chapter 7 trustee, Randell Parker (the “Trustee”). The background of the issue here is summarized in the court’s Order Setting Hearing on Chapter 7 Trustee’s Application for Payment of Fees and Expenses filed on August 14, 2014 (the “Hearing Order”).

This bankruptcy was filed on January 31, 2013. On June 20, 2014, the Trustee filed a Trustee’s Final Report (the “TFR”) showing that the case has been fully administered. Also on June 20, 2014, the Trustee filed an Application for Payment of Final Fees and/or Expenses (the “Application”). The Application was not noticed or set for hearing and no objection has been filed to either the Application or the TFR. However, the Trustee has now submitted an order requesting approval of his fees and expenses together with those of his appointed counsel. The court has an independent duty to review the Application and make sure it complies with the Bankruptcy Code and applicable rules.

1           Based on the TFR, it appears that the Trustee administered one asset, the  
2 Debtors' house, which the Debtors "asked the Trustee to sell . . . as they were  
3 moving to Texas." In March 2013, the Trustee filed a notice of assets directing  
4 creditors to file a proof of claim. The Trustee then retained counsel to assist with  
5 selling the house.<sup>1</sup> In October 2013, the court granted the Trustee's motion to sell  
6 the house for \$300,000, and to pay the real estate broker's commissions and  
7 closing costs. In deciding to sell the house, the Trustee relied upon the value and  
8 the lien amounts as stated in the Debtors' schedules. However, once the property  
9 was in escrow, the actual payoff demands asserted by the two mortgage holders  
10 exceeded the Debtors' estimate by more than \$30,000. The mortgages against the  
11 house totaling \$256,566.08 were paid by the escrow company from the proceeds of  
12 the sale.<sup>2</sup> After payment of the real estate broker's commission and closing costs,  
13 the net result of the sale produced only \$20,956.03 for the bankruptcy estate.

14           The Trustee requested an award of fees in the amount of \$18,232.20 and  
15 expenses in the amount of \$143.49.<sup>3</sup> Pursuant to the TFR, the Trustee proposed to  
16 distribute all of the sale proceeds to himself and his attorney, leaving nothing for  
17 the unsecured creditors. The Trustee calculated his fee based not on the number of  
18 hours he actually worked, but rather on the "not to exceed" formula set forth in 11  
19 U.S.C. § 326(a). The calculation was based on, *inter alia*, the amount which the  
20 escrow company charged in closing costs, the real estate broker's commission, and  
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23           <sup>1</sup>The Trustee's counsel has billed the estate \$3,986 for 16.2 hours of attorney  
24 and paralegal time devoted to assisting the Trustee in that effort.

25           <sup>2</sup>In their schedules, the Debtors valued the house at \$290,866, but they also  
26 stated the amount of the mortgage claims to be \$223,593.77. The Debtors also  
27 amended their schedules to exempt \$10,000 of the estimated equity in the property.

28           <sup>3</sup>Since the bankruptcy estate is administratively insolvent, the Trustee has  
offered to prorate his request for fees to \$16,980, plus costs which leaves \$3,832.04 to  
compensate his counsel. By separate order, the court has approved the requested fees  
and costs for the Trustee's counsel.

1 the payoff to the two mortgagees.<sup>4</sup> For the reasons set forth in the court’s Hearing  
2 Order, the Trustee’s request for fees was set for a hearing and the court requested  
3 time records from the Trustee showing how much time was actually spent  
4 administering this estate.

5 The court has two concerns with the Trustee’s Application. The first arises  
6 with reference to the official Handbook for Chapter 7 Trustees. The Handbook  
7 sets forth guidelines for the administration of assets in a chapter 7 case in pertinent  
8 part as follows:

9 The principal duty of the trustee is to collect and liquidate the  
10 property of the estate and to distribute the proceeds to the  
creditors.

11 A chapter 7 case must be administered to maximize and  
12 expedite dividends to creditors. *A trustee shall not administer*  
13 *an estate or an asset in an estate where the proceeds of*  
14 *liquidation will primarily benefit the trustee or the*  
15 *professionals, or unduly delay the resolution of the case. The*  
16 *trustee must be guided by this fundamental principle when*  
*acting as trustee. Accordingly, the trustee must consider*  
*whether sufficient funds will be generated to make a*  
*meaningful distribution to unsecured creditors, including*  
*unsecured priority creditors, before administering a case as*  
*an asset. 28 U.S.C. § 586.*

17 U.S. DOJ Exec. Office for U.S. Trs., Handbook for Chapter 7 Trustees at 4-1  
18 (2012) (emphasis added).

19 The second concern arises from the requirement in § 326(a) that the  
20 Trustee’s compensation must be “reasonable compensation under section 330 of  
21 this title.” In this Circuit, a chapter 7 trustee’s fee, when calculated in compliance  
22 with section 326(a), is “presumed reasonable” in the absence of “extraordinary  
23 circumstances.” *Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R.

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26 <sup>4</sup>The formula for calculating a trustee’s fee under § 362(a) is based on “all  
27 moneys disbursed or turned over in the case by the trustee to parties in interest,  
28 excluding the debtor, but including holders of secured claims.” Ironically, chapter 7  
trustees universally construe “all moneys disbursed to parties in interest” to include the  
money they disburse to themselves and to their professionals which means they get a  
fee for paying themselves a fee.

1 911, 921 (9th Cir. BAP 2012). When faced with “extraordinary circumstances”  
2 involving the administration of a case, “the bankruptcy court may be called upon  
3 in those cases to determine whether there exists a rational relationship between the  
4 amount of the [section 326(a)] commission and the type and level of services  
5 rendered.” *Id.* Unfortunately, the court in *Salgado-Nava* left “for another day the  
6 issue of what facts might qualify as extraordinary for purposes of activating the  
7 bankruptcy court’s duty to determine the reasonableness of the § 326(a)  
8 commission rates.” *Id.* at 922, n.16.

9 In an effort to resolve the vacuum left in the wake of *Salgado-Nava*, the  
10 courts of this District have subsequently endeavored to paint a clearer picture of  
11 what may constitute such “extraordinary circumstances.” *In re Scoggins*, 517 B.R.  
12 206 (Bankr. E.D. Cal. 2014). A chapter 7 trustee’s request for compensation that  
13 exceeds the amount of money the trustee proposes to distribute to unsecured  
14 creditors constitutes one of those “extraordinary circumstance” which compels a  
15 review of the fees for reasonableness. *Id.* at 217. The situation, as here, where the  
16 Trustee and his counsel propose to keep all of the money and distribute nothing to  
17 unsecured creditors presents the most extreme example of the extraordinary  
18 circumstance described in *Scoggins*.

19 In the absence of the presumption which attaches to § 326(a), the court must  
20 endeavor to find a fair and appropriate allocation of the estate’s assets between the  
21 trustee and professionals who generated those assets, and the unsecured creditors  
22 for whom the trustee and his professionals were employed to work in the first  
23 place. *See In re KVN Corp., Inc.*, 514 B.R. 1, 5 (9th Cir. BAP 2014) (To fulfill the  
24 duty under § 704(a)(1), the trustee’s “primary job is to marshal and sell assets, so  
25 that those assets can be distributed to the estate’s creditors.”) (citing *U.S. Tr. v.*  
26 *Joseph (In re Joseph)*, 208 B.R. 55, 60 (9th Cir. BAP 1997)). The next logical  
27 device in the court’s toolbox is the “lodestar” analysis by which the court attempts  
28 to calculate a reasonable fee based on the hours worked and an appropriate billing

1 rate for those hours. A compensation award based on the lodestar is a  
2 presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir.  
3 1988). The court in *Salgado-Nava* recognized the lodestar analysis as one  
4 appropriate method of determining reasonableness “when confronted with  
5 extraordinary circumstances.” *Salgado-Nava*, 473 B.R. at 921.

6 Here, the Trustee filed a response to the Hearing Order and appeared at the  
7 appointed time for oral argument. The Trustee endeavored to reconstruct a record  
8 of the actual time he spent performing his duties in this case. Based on that record,  
9 the Trustee estimates that he spent approximately 40.9 hours in this case, including  
10 the time spent responding to the Hearing Order. The Trustee values his time at  
11 \$250 per hour.<sup>5</sup> Applying the lodestar formula and presumption, a reasonable fee  
12 for the Trustee’s services would be \$10,225, leaving approximately \$6,755 for  
13 unsecured creditors, an approximately 14% distribution.<sup>6</sup> In light of the  
14 circumstances and difficulties summarized in the Trustee’s response, the court  
15 persuaded that lodestar compensation bears a rational relationship to the services  
16 rendered by the Trustee and is not unreasonable even though it still substantially  
17 exceeds the amount which the unsecured creditors will receive. Based on the  
18 foregoing,

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22 <sup>5</sup>In addition to his duties as a chapter 7 trustee, Parker represented that he also  
23 performs services as a receiver in state court litigation. His billing rate for receivership  
24 work is \$250 per hour. The court has observed that there is a substantial variance in the  
25 “billing rates” which the chapter 7 trustees in this District assign to their time. Since  
26 issuance of the *Scoggins* decision, the court has held three hearings to review trustee  
27 fees in “extraordinary circumstance” cases. The trustees in two of those cases are also  
28 certified public accountants. The billing rates requested by the respondents in those  
matters range from \$225 to \$325. For purposes of this decision, the court accepts the  
Trustee’s “hourly rate” as a reasonable component of the lodestar analysis. The  
question of what constitutes a reasonable hourly billing rate for a chapter 7 trustee will  
be left to another day.

<sup>6</sup>Based on the TFR, eleven general unsecured claims were timely filed and  
allowed in the amount of \$45,521.08. No priority claims were filed.

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IT IS HEREBY ORDERED that the Application for payment of fees and expenses filed by Randell Parker, chapter 7 trustee, is approved in part. Parker is awarded fees in the amount of \$10,225 and expenses in the amount of \$143.49 as reasonable compensation for services rendered in connection with this case.

Dated: November 18, 2014

/s. W. Richard Lee  
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W. Richard Lee  
United States Bankruptcy Judge