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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

| | | |
|----------------------------|---|-----------------------|
| In re | } | Case No. 11-18591-B-7 |
| Roy Vera and Ruth Vera, | } | |
| Debtors. | } | |

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

Before the court is a motion for compensation filed by the chapter 7 trustee, James E. Salven (the “Trustee”). The background of this issue is summarized in the court’s Order Setting Hearing on Chapter 7 Trustee’s Application for Payment of Fees and Expenses filed on August 28, 2014 (the “Hearing Order”).

This bankruptcy was filed on July 29, 2011. On April 18, 2014, the Trustee filed a Trustee’s Final Report (the “TFR”) showing that the case had been fully administered. The TFR was noticed to creditors and no objection was filed to the TFR. However, the Trustee also submitted an order requesting approval of his fees together with those of his appointed counsel. The Trustee requested an award of fees in the amount of \$1,666.68 and expenses in the amount of \$129.57.¹ The court has an independent duty to make sure the Trustee’s request for fees complies with the Bankruptcy Code and applicable rules.

¹Since the bankruptcy estate appeared at that time to be administratively insolvent, the Trustee offered to prorate his request for fees to \$1,118.91 and costs to \$86.99. The rest of the money in the bankruptcy estate was needed to cover the administrative expenses and the fees requested by the Trustee’s counsel.

1 Based on the TFR, it appears that the Trustee attempted to recover and
2 administer one asset, a 20% undivided interest in a parcel of residential property
3 which the Debtors transferred to a family member just prior to the bankruptcy.
4 This case was initially filed as a no-asset case. However, after the meeting of
5 creditors, the Trustee filed a notice of assets directing creditors to file a proof of
6 claim. Based on the TFR, unsecured claims were timely filed and “allowed” for
7 potential distribution in the amount of \$21,845.63.

8 Eight months later, in April 2012, the court authorized the Trustee to retain
9 counsel to assist with recovering the disputed property interest which resulted in
10 the commencement of an adversary proceeding (no. 13-1067; the “Adversary
11 Proceeding”). In November 2013, the court granted the Trustee’s motion to
12 compromise a controversy through which Debtors agreed to pay the estate \$5,000
13 in exchange for dismissal of the Adversary Proceeding. That is the only asset
14 recovered by the Trustee.

15 Pursuant to the TFR, the Trustee proposed to distribute all of the
16 compromise money to himself and his attorney, leaving nothing for the unsecured
17 creditors.² The Trustee calculated his fee based not on the number of hours he
18 actually worked, but rather on the “not to exceed” formula set forth in 11 U.S.C.
19 § 326(a). For the reasons set forth in the court’s Hearing Order, the Trustee’s
20 request for fees was set for a hearing on October 8, 2014.

21 The analysis here begins with the Bankruptcy Code’s mandate that a
22 chapter 7 trustee’s fee must be “reasonable.” § 330(a)(1)(A). In this Circuit, a
23 chapter 7 trustee’s fee calculated in compliance with section 326(a) is “presumed
24 reasonable” in the absence of “extraordinary circumstances.” *Hopkins v. Asset*
25 *Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 921 (9th Cir. BAP 2012). In
26

27 ²The Trustee’s counsel, Carl Collins, Esq., initially requested \$3,368.10 as
28 compensation for his services and costs. By separate order, the court has allowed fees
and costs to Collins in the amount of \$1,606.45.

1 *In re Scroggins*, 517 B.R. 206 (Bankr. E.D. Cal. 2014), the courts of this District
2 have endeavored to paint a clearer picture of what may constitute such
3 “extraordinary circumstances.” A chapter 7 trustee’s request for compensation
4 that exceeds the amount of money the trustee proposes to distribute to unsecured
5 creditors constitutes an “extraordinary circumstance” that compels a review of the
6 fees for reasonableness. *Id.* at 217.

7 In response to the Hearing Order, the Trustee acknowledged that his initial
8 calculation of fees using the formula set forth in § 326(a) was wrong. The correct
9 amount of fees should have been \$1,250 (25% x \$5,000). In light of the Trustee’s
10 modified request, it now appears that the unsecured creditors should receive a
11 distribution of approximately \$2,081, or about 9.5% of their allowed claims (after
12 consideration of the other administrative expenses).³ At that level, the
13 “extraordinary circumstance” issue raised in *Scroggins* is no longer applicable and
14 the court is persuaded that the Trustee’s fee, calculated in compliance with
15 § 326(a), is reasonable. Based on the foregoing,

16 IT IS HEREBY ORDERED that the application for fees filed by James E.
17 Salven, chapter 7 trustee, will be approved in the modified amount of \$1,250, plus
18 costs in the amount of \$129.57.

19 Dated: November 5, 2014

22 /s/ W. Richard Lee
23 W. Richard Lee
24 United States Bankruptcy Judge

25 _____
26 ³The Trustee received \$5,000 for the Adversary Proceeding. From that fund, he
27 has paid bank fees totaling \$32.60. The court has also awarded fees and costs to the
28 Trustee’s counsel in the amount of \$1,606.45. By this order, the Trustee himself will
receive compensation for fees and costs totaling \$1,279.52. The remainder will be
available to distribute to the unsecured creditors. § 726(a)(2).